

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

<b>1</b>			
<b>2</b>			
<b>3</b>	<b>UNITED STATES OF AMERICA,</b>	)	<b>Docket No. 11 CR 50062</b>
<b>4</b>		)	
<b>5</b>	<b>Plaintiff,</b>	)	<b>Rockford, Illinois</b>
<b>6</b>		)	<b>Tuesday, May 7, 2013</b>
<b>7</b>	<b>v.</b>	)	<b>9:00 o'clock a.m</b>
<b>8</b>		)	
<b>9</b>	<b>DAYTON POKE,</b>	)	
<b>10</b>		)	
<b>11</b>	<b>Defendant.</b>	)	

**VOLUME 2  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE FREDERICK J. KAPALA, and a jury**

**APPEARANCES:**

**For the Government:**

**HON. GARY S. SHAPIRO  
Acting United States Attorney  
(327 S. Church Street,  
Rockford, IL 61101) by  
MR. MARK T. KARNER  
MR. JOSEPH C. PEDERSEN  
Assistant U. S. Attorneys**

**For the Defendant:**

**LAW OFFICE OF BRENDAN W CAVER, LTD.  
(308 West State Street,  
Suite 97,  
Rockford, IL 61101) by  
MR. BRENDAN W CAVER**

**Also Present:**

**MR. DANIEL IVANCICH  
Special Agent, ATF**

**Court Reporter:**

**Mary T. Lindbloom  
327 S. Church Street  
Rockford, Illinois 61101  
(815) 987-4486**

1           (The following proceedings were had in open court, out of  
2           the presence and hearing of the jury:)

3           THE COURT: This is 11 CR 50062, United States of  
4           America v. Dayton Poke. Case comes before the court for  
5           continued jury trial.

6           I want to tack down one issue that we visited briefly  
7           yesterday, and that is the issue regarding arguing the  
8           subjective motivation of the officer for the stop. We all agree  
9           that it is irrelevant for purposes of resolving a motion to  
10          suppress, but a trial puts that issue in a different context,  
11          and there may be reasons for allowing it in.

12          Under the facts of this case, there may be very  
13          compelling reasons, practical reasons, why the defendant does  
14          not want it in, and Mr. Karner says the subjective motivation  
15          may have something to do with a murder investigation. Was it a  
16          murder or a shooting investigation?

17          MR. KARNER: Murder, Judge.

18          THE COURT: And I don't know whether the defense wants  
19          to go anywhere near that. But what I'm telling you is it's  
20          still open in my mind. You ought to talk to your client about  
21          whether you want to go into that. If you do, I'll need some  
22          authority for allowing it in. But I'll let you take it from  
23          there.

24          MR. CAVER: Thank you, Judge.

25          THE COURT: But, Mr. Caver, if you decide you want to

1       pursue that line of questioning, will you let me know as soon as  
2       possible so I can start working on it?

3               MR. CAVER: Yes, absolutely, Judge.

4               (Brief pause.)

5               MR. CAVER: Judge, thank you very much. I realize we  
6       want to get started promptly at 9:00. If there's a way that I  
7       could work in -- if there's any way that the court could work in  
8       a few moments to speak with my client about this issue because  
9       it was an important issue.

10              THE COURT: Do it right now.

11              MR. CAVER: Thank you.

12              THE COURT: Sure.

13              (Brief pause.)

14              MR. CAVER: Thank you, your Honor.

15              THE COURT: You're welcome.

16              (Brief pause.)

17              MR. CAVER: Judge, I don't know if the government will  
18       have any response. I just wanted to place on the record  
19       yesterday during jury selection in the first panel, Mr. Bowdry  
20       was excused by a peremptory challenge by the government. I just  
21       wanted to put on the record, if it wasn't clear, Mr. Bowdry was  
22       African-American, and he was the only African-American in that  
23       panel, and I just wanted to make a record today if it was in any  
24       way unclear. I requested a reason other than the fact that a  
25       peremptory challenge was being used. The government, citing

1 case law, just declined to provide any nonracial reason why he  
2 was excused, and I just want to make that clear today.

3 THE COURT: Okay. But it's also clear that you're not  
4 making a Batson challenge.

5 MR. CAVER: Well, without there being provided a race  
6 neutral reason as to why Mr. Bowdry was excused, I suppose I am

7 THE COURT: Well, I don't know how you can make it now.  
8 We've got the jury picked and ready to come in. I mean, we  
9 could have addressed the issue and maybe resolved it while the  
10 jury was still being impaneled, but it's a little late to bring  
11 it up to me now.

12 MR. CAVER: I understand, Judge. And when we were at  
13 sidebar yesterday, that was my intent by raising the question at  
14 that time when the government declined to provide that reason.

15 THE COURT: Okay. Well, there's a -- the government  
16 being required to provide a justification comes at the end of  
17 the analysis. There's a protocol that you go through in order  
18 to get to that point, and you really foreclosed me being able to  
19 do that.

20 MR. CAVER: At this point all I'd like to do is make a  
21 record that that is what happened, in case I was unclear in any  
22 way about the race of the actual juror. I think the most --

23 THE COURT: That's fine, and I'm glad to put that on  
24 the record, that the race of Mr. Bowdry was African-American.  
25 But I don't know --

1           **MR. CAVER:** In terms of a formal challenge to Batson,  
2 then I suppose that is not what's being made at this time.

3           **THE COURT:** All right. That's all I need to know.

4           **MR. CAVER:** Thank you, Judge.

5           **THE COURT SECURITY OFFICER:** They're all set, your  
6 Honor.

7           **THE COURT:** All right. Let's bring them in.

8           (The following proceedings were had in open court, in the  
9 presence and hearing of the jury:)

10           **THE COURT:** Good morning, everyone. Nice to see you  
11 all again. We'll proceed with the trial. Mr. Karner.

12           **MR. KARNER:** Your Honor, may I read the stipulations  
13 into the record, please?

14           **THE COURT:** Certainly.

15           **MR. KARNER:** Did the court want to instruct the jury on  
16 a stipulation?

17           **THE COURT:** I already did.

18           **MR. KARNER:** Okay. Stipulation Number One reads: It  
19 is hereby stipulated and agreed by, among, and between the  
20 United States of America, by Gary S. Shapiro, United States  
21 Attorney for the Northern District of Illinois, and Dayton Poke,  
22 individually and through his attorney, Brendan Caver, as  
23 follows. That prior to July 6, 2011, the defendant, Dayton  
24 Poke, had been convicted of a crime punishable by imprisonment  
25 for a term exceeding one year, that is, a felony offense. And

1       this was stipulated and agreed to by the parties.

2               Stipulation Number Two reads: The United States of  
3       America, by Gary S. Shapiro, United States Attorney for the  
4       Northern District of Illinois, defendant, Dayton Poke,  
5       personally and by his attorney, Brendan Caver, agree and  
6       stipulate as follows. Sarah Anderson is an expert in drug  
7       analysis. If called to testify, Sarah Anderson would testify to  
8       the following. She is a senior forensic scientist employed by  
9       the Illinois State Police at the Rockford Forensic Science  
10      Laboratory in Rockford, Illinois, and her duties include the  
11      chemical analysis of substances to determine whether or not the  
12      substance is or contains a narcotic or narcotic drug.

13             Ms. Anderson would further testify that she received  
14      the mixtures contained in Government's Exhibit 7 in a sealed  
15      plastic bag. Ms. Anderson would testify that when she received  
16      the mixtures contained in Government's Exhibit 7, they were  
17      further contained in eight separate plastic bags. Ms. Anderson  
18      would testify that she performed a chemical analysis of the  
19      mixture contained in one of the eight plastic bags contained in  
20      Government's Exhibit 7 and determined that the mixture contained  
21      cocaine base and had a total weight of approximately 1.2 grams.  
22      Ms. Anderson would further testify she did not perform any  
23      chemical analysis of the remaining seven bags contained in  
24      Government's Exhibit 7. Again, that's stipulated to by the  
25      parties.

**Nordberg - Direct**

1           **Stipulation Number Three reads: It is hereby**  
2           **stipulated and agreed by, among, and between the United States**  
3           **of America, by Gary S. Shapiro, United States Attorney for the**  
4           **Northern District of Illinois, and Dayton Poke, individually and**  
5           **through his attorney, Brendan Caver, as follows. That prior to**  
6           **July 6, 2011, the Hi-Point Model JCP 40 S&W .40 caliber handgun**  
7           **with serial number X744976 identified in the indictment had been**  
8           **transported in interstate commerce. And that's stipulated by**  
9           **the parties.**

10           **May we call our first witness, your Honor?**

11           **THE COURT: Yes, please.**

12           **MR. KARNER: Call Rockford Police Detective Kevin**  
13           **Nordberg.**

14           **(Brief pause.)**

15           **(Witness duly sworn.)**

16           **KEVIN NORDBERG, GOVERNMENT'S WITNESS, SWORN**

17           **DIRECT EXAMINATION**

18           **BY MR. KARNER:**

19           **Q. Sir, would you tell us your name and spell your last name?**

20           **A. It's Kevin Nordberg, N-o-r-d-b-e-r-g.**

21           **Q. Are you employed?**

22           **A. City of Rockford Police Department.**

23           **Q. And what is your position with the City of Rockford Police**  
24           **Department?**

25           **A. Detective.**

**Nordberg - Direct**

**1 Q. How long have you been a police officer?**

**2 A. Eighteen years.**

**3 Q. What is your job assignment right now?**

**4 A. Gang crimes.**

**5 Q. What are your responsibilities as a gang crimes detective?**

**6 A. Mostly any gang-related crimes, violent type crimes,  
7 anything that's affiliated with gang activity.**

**8 Q. You investigate?**

**9 A. Yes.**

**10 Q. Okay. I want to direct your attention to July 6th, 2011.  
11 Were you working on that day?**

**12 A. Yes, I was.**

**13 Q. Were you assigned to work with a partner?**

**14 A. Yes, I was.**

**15 Q. Who was your partner on that day?**

**16 A. Detective Pruitt.**

**17 Q. Okay. Now, do you recall what shift you were working?**

**18 A. It was a 3:00 p.m to 11:00 p.m shift.**

**19 Q. And that day were you assigned to work in a particular car?**

**20 A. We were just working together in Detective Pruitt's car.**

**21 Q. Okay. And is that a marked squad car or an unmarked car?**

**22 A. It's an unmarked car.**

**23 Q. What kind of car was it?**

**24 A. It's a Chevy Impala.**

**25 Q. And so, it had no markings on the exterior that designated**

**Nordberg - Direct**

1     **it as a police car?**

2     **A. That's correct.**

3     **Q. Did it have emergency lights?**

4     **A. Yes, it did.**

5     **Q. Okay. Where were the emergency lights?**

6     **A. There's a light that you can stick on the dash, and there**  
7     **are built-in lights on the front that flash, and then the rear**  
8     **lights built into the tail light assembly.**

9     **Q. Okay. Now, as you began your shift that day, what type of**  
10    **gear or clothing were you wearing?**

11    **A. Wore a -- it's like a dark blue police raid vest. It's a**  
12    **bulletproof vest. It's got Police here and has a badge on it,**  
13    **and the back says Police on it, and then my duty belt, just**  
14    **jeans and a shirt.**

15    **Q. Okay. Now, I want to direct your attention to approximately**  
16    **7:25 in the evening. Were you and Detective Pruitt in the**  
17    **southeast quadrant of Rockford?**

18    **A. Yes, we were.**

19    **Q. Specifically near the intersection of 8th Street and 10th**  
20    **Avenue?**

21           **MR. CAVER: Objection. Leading.**

22           **THE COURT: It's preliminary. I'll allow that question**  
23    **to stand.**

24    **BY MR. KARNER:**

25    **Q. Were you near 8th Street and 10th Avenue?**

**Nordberg - Direct**

1       A.   Yes, we were.

2       Q.   What street were you actually on before you made a traffic  
3       stop that day?

4       A.   We were on 10th Avenue.   I'm sorry.   8th Avenue.

5       Q.   8th Avenue or 8th Street?

6       A.   I'm sorry.   8th Street.

7       Q.   Okay.   Facing what direction?

8       A.   We were facing to the north.

9       Q.   And is there a stop sign at 8th Street and 10th Avenue?

10      A.   Yes, there is.

11      Q.   Now, did anything catch your attention when you were at that  
12      intersection?

13      A.   Directly across 10th Street at the stop sign on the other  
14      side was a silver Chevy Impala that was stopped at that stop  
15      sign.

16      Q.   Now, you just said 10th Street.   Do you mean 10th Street or  
17      10th Avenue?

18      A.   10th Avenue.   I'm sorry.   10th Avenue.

19      Q.   Okay.   So, this car was on 8th Street?

20      A.   Yes, it was.

21      Q.   Facing out the opposite direction as your car?

22      A.   That's correct.

23                   MR. CAVER:   Objection.   Leading.

24                   THE COURT:   Overruled.

25

**Nordberg - Direct**

**1 BY MR. KARNER:**

**2 Q. Well, could you tell what type of car it was?**

**3 A. Yes. It was a Chevy Impala.**

**4 Q. All right. And had you seen that car before?**

**5 A. Yes.**

**6 Q. Right around this time, did you receive any information  
7 about a crime that had been committed?**

**8 A. Yes, we did.**

**9 Q. What did you learn?**

**10 A. There had been a dispatch to the Quick Stop, which is  
11 several blocks to the west, that there had been an armed robbery  
12 there.**

**13 Q. And when were you notified of that armed robbery in relation  
14 to when you saw this Impala across 10th Avenue from you?**

**15 A. It was a short time, within maybe ten seconds.**

**16 Q. Okay. So, when you see this Chevy Impala, what did you see  
17 it do?**

**18 A. At that point it was stopped at the stop sign, and it then  
19 made a left-hand turn onto 10th Avenue.**

**20 Q. Could you tell how many occupants it had?**

**21 A. I could see that it had one occupant in it, just the driver.**

**22 Q. When that Impala made the left turn right in front of you,  
23 what action did you and Pruitt take?**

**24 A. We pulled in behind the Impala.**

**25 Q. Who was driving your unmarked squad?**

**Nordberg - Direct**

1       **A. Detective Pruitt was.**

2       **Q. When you pulled in behind the Impala, where did you see it**  
3       **drive to?**

4       **A. It went just almost like halfway up the block, and then it**  
5       **immediately turned into a driveway.**

6       **Q. Now, when it made the turn into the driveway, had you or**  
7       **Detective Pruitt made any signals to get it to stop?**

8       **A. Not at that time, no.**

9       **Q. Okay. When it turned into the driveway, were you looking to**  
10       **see if it activated its turn signal?**

11       **A. We saw that it did not.**

12       **Q. It did not?**

13       **A. Did not.**

14       **Q. Okay. And when it did not activate its turn signal, what**  
15       **action did you and Detective Pruitt take?**

16       **A. Then we initiated a traffic stop on the silver Impala.**

17       **Q. When you say you initiated a traffic stop, what do you mean?**  
18       **What action did you take?**

19       **A. Well, Detective Pruitt activated the emergency lights on the**  
20       **squad.**

21       **Q. Had the Impala already stopped by the time Pruitt activated**  
22       **the squad car lights?**

23       **A. It would have been very close to the same time.**

24       **Q. Okay. And after the emergency lights were activated, what**  
25       **did you and Pruitt do?**

**Nordberg - Direct**

1     **A. Detective Pruitt -- the car had pulled into a driveway, and**  
2     **it was facing to the south, and Detective Pruitt pulled his**  
3     **squad kind of behind the Impala at a slight angle, still kind of**  
4     **on the sidewalk and the back end still out in the street.**

5     **Q. And then what happened after you pulled into the driveway?**

6     **A. We exited the squad and approached the Impala.**

7     **Q. Okay. Now, where did you see Detective Pruitt go?**

8     **A. He went to the driver's side of the silver Impala.**

9     **Q. Where did you go?**

10    **A. To the rear passenger side by the trunk area.**

11    **Q. What did you see as you went to the rear passenger side of**  
12    **the Impala?**

13    **A. I could see the driver was -- he was sitting in the driver's**  
14    **seat, and he was making a motion with his right hand down below,**  
15    **like toward the floorboard.**

16    **Q. Now, the driver, did you eventually determine who he was?**

17    **A. Yes.**

18    **Q. Who was he?**

19    **A. Dayton Poke.**

20    **Q. Do you see Dayton Poke in court here this morning?**

21    **A. Yes, I do.**

22    **Q. Would you point him out and describe his appearance for the**  
23    **court?**

24    **A. He's the gentleman sitting there in the greenish shirt.**

25           **MR. KARNER: May the record reflect an in-court**

**Nordberg - Direct**

**1 identification of the defendant?**

**2 THE COURT: Yes, the record may so show.**

**3 BY MR. KARNER:**

**4 Q. After you saw the defendant bend down with his right**  
**5 shoulder, did you hear anything?**

**6 A. Detective Pruitt was telling him to stay in the car.**

**7 Q. Could you see whether or not the defendant was trying to get**  
**8 out of the car?**

**9 A. Yes, he was.**

**10 Q. Did you hear anything else?**

**11 A. As the defendant was attempting to get out of the car,**  
**12 Detective Pruitt shouted what in police code is 1032, which**  
**13 means gun.**

**14 Q. Stop for second. You said 1032. He shouted it out?**

**15 A. Yes.**

**16 Q. 1032 is a special code that's used among Rockford police**  
**17 officers?**

**18 A. Yes.**

**19 MR. CAVER: I'm going to object to the leading again.**

**20 THE COURT: Sustained.**

**21 BY MR. KARNER:**

**22 Q. Well, explain exactly what 1032 is.**

**23 A. 1032 is a police code that we use. It means gun.**

**24 Q. Why do you need a code for gun?**

**25 A. You don't often want to tip off people that we see what we**

**Nordberg - Direct**

1       see, that kind of thing.

2       Q.   And he yelled it?

3       A.   Yes, he did.

4       Q.   Now, after he yelled it, what did you do?

5       A.   I started coming around to the driver's side of the vehicle.

6       Q.   What happened as you came around to the driver's side of the  
7       vehicle?

8       A.   Mr. Poke was outside of the car. He had got up and was  
9       standing -- like the V part of the driver's door, he was  
10      standing there with Detective Pruitt.

11      Q.   Now, did you ever hear the defendant explain why he drove  
12      into that driveway?

13      A.   Yes, I did.

14      Q.   What did you hear him say?

15      A.   He said he was trying to get in his house.

16      Q.   After he got out of the car, what happened?

17      A.   He had closed the driver's door and was attempting to lock  
18      it.

19      Q.   What action did you and Detective Pruitt take?

20      A.   Detective Pruitt had grabbed ahold of his left arm I  
21      grabbed ahold of his right arm

22      Q.   Why?

23      A.   We were going to secure him in handcuffs.

24      Q.   Did he comply?

25      A.   He was very tense. It was really hard. We had to force his

**Nordberg - Direct**

1      **hands back. And he was saying that he had been shot with an**  
2      **AK-47.**

3      **Q. Now, you said tense. Describe what you mean.**

4      **A. You could feel all his muscles were really tight in his arm**  
5      **and we really had to like force his arm back. He was really**  
6      **trying to keep us from doing that.**

7      **Q. Okay. And in your experience as a police officer, are you**  
8      **familiar with people -- sensing that when people are resistant**  
9      **to being handcuffed?**

10     **A. Yes, I am**

11     **Q. And how did you take this incident? Was he unable to move,**  
12     **or was he refusing to move?**

13     **A. No, he was refusing to move.**

14     **Q. Did it take both you and -- well, did one of you**  
15     **individually handcuff the defendant, or did it take both of you?**

16     **A. No, it took both of us.**

17     **Q. Was the defendant asked for his keys?**

18     **A. Yes, he was.**

19     **Q. By whom?**

20     **A. Detective Pruitt.**

21     **Q. Did the defendant give up those keys immediately?**

22     **A. Not immediately, no.**

23     **Q. What happened?**

24     **A. He had -- the keys were clenched in his fists, and we had to**  
25     **kind of pry them out of his hands.**

**Nordberg - Direct**

1     **Q.   Okay.   Once you pried the keys out of his hands, was the**  
2     **defendant secured in a squad car?**

3     **A.   Yes.**

4             **MR. CAVER:   Objection to the leading.**

5             **MR. KARNER:   I'll withdraw it, Judge.**

6     **BY MR. KARNER:**

7     **Q.   Okay.   We'll take it piece by piece.**

8             **After you got the keys, what happened?**

9     **A.   A patrol squad had shown up.   They have cages.   And he was**  
10    **secured in that squad.**

11   **Q.   Before he was secured in that squad, did you obtain any item**  
12    **of property from the officer whose squad the defendant was**  
13    **secured in?**

14   **A.   Yes.   We got a plastic bag, which we got from the other**  
15    **officer.**

16   **Q.   And that contained what?**

17   **A.   Well, it was empty at the time, and that's what we used to**  
18    **collect the property.**

19   **Q.   And did you collect a specific item from an officer whose**  
20    **squad car the defendant was secured in?**

21   **A.   Just the plastic bag.**

22   **Q.   Okay.   And then did you -- after the defendant was secured**  
23    **in the squad car, did you search the defendant's car?**

24   **A.   Yes, I did.**

25   **Q.   And did you find any items of contraband in the car?**

**Nordberg - Direct**

1       **A.    Yes.**

2       **Q.    What did you find?**

3       **A.    In addition to the handgun, which was underneath the**  
4       **driver's seat, in the center console was a small plastic baggie**  
5       **that contained an amount of off-white, rocklike substance. It**  
6       **was in individual little baggies.**

7               **MR. KARNER:   May I approach the witness, your Honor?**

8               **THE COURT:   You don't have to ask permission to**  
9       **approach.**

10              **MR. KARNER:   Thank you.**

11       **BY MR. KARNER:**

12       **Q.    I'm going to show you what's been marked as Government's**  
13       **Exhibit 6.**

14              **MR. KARNER:   And again, Judge, this handgun has been**  
15       **secured and is unloaded and cannot be fired.**

16       **BY MR. KARNER:**

17       **Q.    Would you look at Government's Exhibit 6 and tell us if you**  
18       **recognize what's shown there? And don't point it.**

19       **A.    Yes.**

20       **Q.    And 6A?**

21       **A.    Yes.**

22       **Q.    What is that?**

23       **A.    That is the handgun that was recovered from the vehicle.**

24       **Q.    And specifically you're referring to Government's Exhibit 6?**

25       **A.    That is correct.**

**Nordberg - Direct**

1     **Q. And 6A, do you recognize that?**

2     **A. Yes. That is the magazine that was in the handgun.**

3     **Q. Okay. Are those items in substantially the same condition**  
4     **as when you recovered them?**

5     **A. Yes, they are.**

6     **Q. Now, was that handgun loaded or unloaded when you recovered**  
7     **it?**

8     **A. Loaded.**

9     **Q. Okay. And which way was the barrel facing when you first**  
10    **saw it?**

11    **A. It was facing out from underneath the driver's seat.**

12    **Q. Showing you Government's Exhibit 7 for identification, do**  
13    **you recognize what that is?**

14    **A. Yes, I do.**

15    **Q. What is that?**

16    **A. That's the small baggies of white substance that was**  
17    **recovered from the center console.**

18    **Q. And was the center console -- the lid closed or open when**  
19    **you recovered it?**

20    **A. It was closed.**

21    **Q. When you first --**

22    **A. Yes.**

23    **Q. And is that -- have you seen this substance with these**  
24    **physical characteristics before?**

25    **A. Yes, I have.**

**Nordberg - Direct**

1     **Q. Based on your training and experience, what did you believe**  
2     **this to contain?**

3     **A. Cocaine.**

4     **Q. Is Government's Exhibit 7 in substantially the same**  
5     **condition?**

6     **A. Yes, it is.**

7     **Q. As when you recovered it?**

8             **Now, you recovered some other items into evidence?**

9             **THE COURT: Could I ask how the gun's been disabled?**

10            **MR. KARNER: I'm sorry?**

11            **THE COURT: Could I ask how the gun's been disabled?**

12            **MR. KARNER: Yes, Judge. The magazine has been taken**  
13     **out. There's a tie that's been put in the trigger guard and the**  
14     **slide that prevents it from operating.**

15            **THE COURT: All right. Thank you.**

16     **BY MR. KARNER:**

17     **Q. Did you also recover some other items?**

18     **A. Yes, other items were recovered. Yes.**

19     **Q. Showing you Government's Exhibit 8 for identification, what**  
20     **is that?**

21     **A. That's the cash that was removed from Mr. Poke's pants**  
22     **pocket.**

23     **Q. And how much money was that?**

24     **A. I believe it was \$260.**

25     **Q. Is that in substantially the same condition as when it was**

**Nordberg - Direct**

**1 recovered?**

**2 A. Yes, it is.**

**3 Q. And showing you Government's Exhibit 9 for identification,**  
**4 what's that?**

**5 A. That's a Sanyo Cricket cell phone that Mr. Poke had on his**  
**6 person.**

**7 Q. And you recovered that from who?**

**8 A. From Mr. Poke.**

**9 Q. And is Government's Exhibit 9 in substantially the same**  
**10 condition?**

**11 A. Yes, it is.**

**12 Q. Now, were photographs taken both outside and inside the car?**

**13 A. Yes, they were.**

**14 Q. I ask you to flip through Government's Exhibits 10 through**  
**15 18 and just flip through those and tell us if you recognize**  
**16 what's shown there.**

**17 THE COURT: Could we take a break?**

**18 (Brief pause.)**

**19 THE COURT: Folks, technology does a lot of great**  
**20 things for us, but sometimes it causes problems.**

**21 All right. Sorry for the interruption.**

**22 MR. KARNER: May I proceed?**

**23 THE COURT: Yes, please.**

**24 BY MR. KARNER:**

**25 Q. Now, the phone, did you personally take that off the**

**Nordberg - Direct**

**1       defendant, or did you get that from Officer Dodd?**

**2       A.   From Officer Dodd.**

**3       Q.   Now, the photographs I just showed you, Government's**  
**4       Exhibits 10 through 18, are you familiar with what is shown in**  
**5       those photos?**

**6       A.   Yes, I am**

**7       Q.   And do those photos fairly and accurately show the**  
**8       conditions that you saw both outside and inside the car**  
**9       immediately after the traffic stop?**

**10      A.   Yes.**

**11               MR. KARNER:   Your Honor, I'd move for the admission of**  
**12       Government's 10 through 18 and ask leave to publish individually**  
**13       to the jury.**

**14               THE COURT:   Any objection to their admission?**

**15               MR. CAVER:   No objection.**

**16               THE COURT:   As long as the exhibits are admitted, you**  
**17       can publish them any time you see fit.**

**18               MR. KARNER:   Thank you, your Honor.**

**19               (Government's Exhibits 10 through 18 were offered and**  
**20       received in evidence.)**

**21               MR. KARNER:   We would ask leave to show the witness and**  
**22       the jury Government's Exhibit 10.**

**23       BY MR. KARNER:**

**24       Q.   Can you see Government's Exhibit 10?**

**25       A.   Yes.**

**Nordberg - Direct**

**1 Q. What is that?**

**2 A. It's a picture of the rear of the silver Impala.**

**3 Q. Driven by the defendant?**

**4 A. Yes.**

**5 Q. Is that the position he parked the car in when he entered**  
**6 the driveway?**

**7 A. Yes, it is.**

**8 Q. I'm showing Government's Exhibit 11. What's shown there?**

**9 A. That's the driver's side of the Impala driven by defendant.**

**10 Q. That would have been the view that Detective Pruitt had, of**  
**11 course farther away than Pruitt, but the side that Detective**  
**12 Pruitt approached the defendant at?**

**13 A. Yes, it is.**

**14 Q. Government's Exhibit 12. What's shown there?**

**15 A. That's a photo taken from top down showing the handgun**  
**16 sticking out from underneath the driver's seat.**

**17 Q. Now, is that the position the handgun was in when you first**  
**18 entered the car to search it?**

**19 A. Yes, it is.**

**20 Q. So, that was not manipulated by a police officer?**

**21 A. No, it was not.**

**22 Q. Showing you Government's Exhibit 15, what's shown there?**

**23 A. That's kind of a direct under picture of the handgun as it**  
**24 lays underneath the driver's seat.**

**25 Q. And Government's Exhibit 17?**

**Nordberg - Direct**

1       **A. That's the contents inside the center console, and it shows**  
2       **the plastic baggie there that contained the cocaine.**

3       **Q. Government's Exhibit 18?**

4       **A. That's also the contents of the center console after it was**  
5       **opened.**

6               **MR. KARNER: Can I have a moment, your Honor?**

7               **THE COURT: Yes.**

8               **(Brief pause.)**

9               **MR. KARNER: We have no further questions.**

10              **THE COURT: Mr. Caver.**

11                               **CROSS EXAMINATION**

12       **BY MR. CAVER:**

13       **Q. At the time you left the scene of the armed robbery at the**  
14       **Quick Stop, had you concluded your business there?**

15              **MR. KARNER: Judge, I object. That's a fact not in**  
16       **evidence. There's been no testimony that this witness went to**  
17       **the scene of the armed robbery.**

18              **THE COURT: I agree. I believe he said he received a**  
19       **radio transmission about it.**

20              **MR. CAVER: Okay.**

21       **BY MR. CAVER:**

22       **Q. Where were you parked when you initially saw the Impala?**

23              **THE COURT: You can ask him if he came from it.**

24              **MR. CAVER: Thank you.**

25              **THE COURT: But Mr. Karner is right when he says the**

**Nordberg - Cross**

1        **question assumes facts not in evidence.**

2        **BY MR. CAVER:**

3        **Q.    Where were you parked?**

4        **A.    We were not parked.**

5        **Q.    You were driving?**

6        **A.    Yes.**

7        **Q.    Where were you driving on?**

8        **A.    In the area of 8th Street and 10th Avenue.**

9        **Q.    And why were you there?**

10       **A.    I'm sorry?**

11       **Q.    Why were you there?**

12       **A.    We were on patrol.**

13       **Q.    Okay. And were you called at all to a scene?**

14       **A.    No, we were not.**

15       **Q.    Okay. And so, you were just -- what is in the area of 8th**  
16       **Street and 10th Avenue there?**

17       **A.    It is a residential area.**

18       **Q.    Okay. Did you receive any dispatch?**

19       **A.    We were not dispatched, but we can hear the call go out for**  
20       **the armed robbery.**

21       **Q.    Okay. And so, at that point you didn't receive any call**  
22       **saying that the suspects had been apprehended or anything?**

23       **A.    No.**

24       **Q.    And at that point you conducted a traffic stop?**

25       **A.    That's correct.**

**Nordberg - Cross**

1     **Q. And that's when you saw the Impala, you saw it fail to**  
2     **signal, and then it turned into the driveway?**

3     **A. That's correct.**

4     **Q. And how many occupants were in the vehicle?**

5     **A. Just the driver.**

6     **Q. And if you can approximate, in terms of the time that it**  
7     **took for you to see the vehicle and then pull it over with your**  
8     **lights, about how long did that take?**

9     **A. Twenty seconds.**

10    **Q. And in that 20 seconds, did you observe anything inside the**  
11    **car?**

12    **A. No.**

13    **Q. And you were just taking up a position?**

14    **A. I'm not understanding your question.**

15    **Q. At that point were you just taking up a position to back up**  
16    **Detective Pruitt?**

17    **A. Are you saying had we already stopped the car then?**

18    **Q. After you stopped the car --**

19    **A. Okay.**

20    **Q. -- what did you do?**

21    **A. I approached the rear trunk area.**

22    **Q. And was the reason for that to take a protective position**  
23    **for Detective Pruitt?**

24    **A. That is correct.**

25    **Q. Okay. And so, you say the 20-second time frame that you**

**Nordberg - Cross**

1 just gave was from the time that you observed the Impala until  
2 the time that you stopped the vehicle in the driveway?

3 A. That's correct.

4 Q. When you took the items that the government just showed you  
5 into evidence, did you recover a cell phone?

6 A. Yes.

7 Q. And was the cell phone also recovered from the vehicle?

8 A. No, it was not.

9 Q. Where was it recovered from?

10 A. From Mr. Poke.

11 Q. And at that time then you -- did you ever see the cell phone  
12 in the car?

13 A. No, I did not.

14 MR. CAVER: Judge, if I may have a moment.

15 THE COURT: Sure.

16 (Brief pause.)

17 BY MR. CAVER:

18 Q. Detective --

19 MR. CAVER: Judge, may I approach?

20 THE COURT: You don't have to ask for permission to  
21 approach a witness.

22 BY MR. CAVER:

23 Q. Detective, I'm going to show you what I've previously marked  
24 for identification as Defense Exhibits Number 1 and 2. They're  
25 two photographs. Do you recognize these photographs?

**Nordberg - Cross**

**1       A.   Yes, I do.**

**2       Q.   And what do they depict?**

**3       A.   Number 1 is the top down view of the driver's seat**  
**4       floorboard area.**

**5       Q.   And do they fairly and accurately depict the scene as it**  
**6       appeared on July 6th, 2011?**

**7       A.   Yes, they do.**

**8       Q.   And would you say that in those photographs the gun is more**  
**9       toward the right or left side of the seat?**

**10      A.   More centered.**

**11      Q.   Okay. So, not more toward the right or the left?**

**12      A.   No. I believe more centered.**

**13      Q.   Thank you.**

**14               MR. CAVER: Judge, I would ask -- I'd move for**  
**15       admission of People's Exhibits Number 1 and 2. Or Defense**  
**16       Exhibits. I'm sorry.**

**17               MR. KARNER: No objection.**

**18               THE COURT: You're moving for their admission?**

**19               MR. CAVER: We're moving for their admission. We are.**

**20               THE COURT: And there's no objection?**

**21               MR. KARNER: No objection.**

**22               THE COURT: They are admitted.**

**23               (Defendant's Exhibits 1 and 2 were offered and received in**  
**24       evidence.)**

**25**

**Nordberg - Cross**

**1 BY MR. CAVER:**

**2 Q. Detective Nordberg, did you previously testify in a hearing**  
**3 related to this matter?**

**4 A. Yes, I did.**

**5 Q. And were you asked this question and gave this answer?**

**6 MR. KARNER: Can we have a page, counsel?**

**7 MR. CAVER: 60 and 61.**

**8 BY MR. CAVER:**

**9 Q. Were you asked this question and gave this answer?**

**10 "Q. Now, do you recall there being a Sanyo Cricket cell**  
**11 phone recovered from the front floorboard of that vehicle?**

**12 "A. I know there was a cell phone recovered. I don't know**  
**13 from where. "**

**14 A. Yes.**

**15 Q. Now, is there a reason that your memory would be better**  
**16 today than it was on the date of your testimony for the motion**  
**17 to quash and suppress?**

**18 A. Yes.**

**19 Q. What's that?**

**20 A. I've reviewed reports and spoke with the officers.**

**21 Q. So, your testimony today isn't based on an independent**  
**22 recollection. It's based on your review of other officers'**  
**23 reports?**

**24 A. Well, I refreshed my memory on how it was recovered, the**  
**25 cell phone was recovered.**

**Nordberg - Cross**

1       **Q. So, when you testified in August of 2012, did you have the**  
2       **benefit of the reports that had been prepared from the incident**  
3       **from July of 2011?**

4       **A. I had looked at Officer Pruitt's report.**

5       **Q. Okay. But today your memory is better about what happened**  
6       **on that date almost two years ago than it was on the date of the**  
7       **motion to suppress?**

8       **A. That's correct.**

9       **Q. And you have no other explanation for that other than the**  
10       **fact that you've reviewed other officers' reports?**

11       **A. Yes.**

12       **Q. Thank you.**

13               **MR. CAVER: Thank you, Judge. Nothing further.**

14               **MR. KARNER: Your Honor, I would just move to admit**  
15       **Government's Exhibits 6, 7, 8, and 9.**

16               **THE COURT: What about 6A?**

17               **MR. KARNER: And 6A.**

18               **THE COURT: Any objection?**

19               **MR. CAVER: There's no objection, Judge.**

20               **THE COURT: 6, 6A, 7, 8, and 9 are admitted.**

21       **(Government's Exhibits 6, 6A, 7, 8, and 9 were offered and**  
22       **received in evidence.)**

23               **MR. KARNER: Okay. We have no further questions of**  
24       **Detective Nordberg.**

25               **THE COURT: You may step down.**

**Dodd - Direct**

**1 (Witness excused.)**

**2 THE COURT: Next witness, please.**

**3 MR. PEDERSEN: The United States calls Richard Dodd.**

**4 (Brief pause.)**

**5 (Witness duly sworn.)**

**6 RICHARD DODD, GOVERNMENT'S WITNESS, SWORN**

**7 DIRECT EXAMINATION**

**8 BY MR. PEDERSEN:**

**9 Q. Could you state your name and spell your last name, please?**

**10 A. Officer Richard Dodd, D-o-d-d.**

**11 Q. How are you employed?**

**12 A. With the City of Rockford Police Department.**

**13 Q. How long have you been employed as a police officer with the**  
**14 Rockford Police Department?**

**15 A. About five years and three months.**

**16 Q. What are your duties as a Rockford police officer?**

**17 A. Patrol officer.**

**18 Q. What does that involve?**

**19 A. Handling calls, self-initiated duty.**

**20 Q. Do you work a particular time shift, or does it vary?**

**21 A. Right now I'm on a particular time shift, afternoons from**  
**22 4:00 p.m. to 2:00 a.m.**

**23 Q. Were you on that same time shift back in July of 2011?**

**24 A. Yes, I was.**

**25 Q. I'm going to call your attention to July 6th of 2011. Were**

**Dodd - Direct**

**1       you working that evening?**

**2       A.   Yes, I was.**

**3       Q.   Did you receive a dispatch around 7:30 p.m that day to**  
**4       respond to a traffic stop that occurred at XXXX XXXX XXXXXX in**  
**5       Rockford?**

**6       A.   Yes.**

**7       Q.   And what did you observe when you arrived there?**

**8       A.   I observed a car pulled over in a driveway and officers in**  
**9       the driveway around the vehicle.**

**10      Q.   Okay. I'm going to show you Government's Exhibit 10, if we**  
**11      could pull that up. Is that the car that you saw pulled over in**  
**12      the driveway at XXXX XXXX XXXXXX?**

**13      A.   Yes, it was.**

**14      Q.   And was there an individual who you had been told was the**  
**15      driver of that vehicle, was he in custody at that time?**

**16      A.   Yes.**

**17      Q.   And where was he at in relation to the vehicle when you**  
**18      arrived?**

**19      A.   I believe he was over on the driver's side more towards the**  
**20      rear of the car.**

**21      Q.   Was he handcuffed at that time?**

**22      A.   Yes.**

**23      Q.   Do you see that individual in the courtroom today?**

**24      A.   Yes, I do.**

**25      Q.   Could you point to him and identify him by something that**

**Dodd - Direct**

**1 he's wearing?**

**2 A. An olive green button-up shirt.**

**3 MR. PEDERSEN: Your Honor, I'd ask that the record**  
**4 reflect identification of the defendant, Dayton Poke.**

**5 THE COURT: Yes.**

**6 BY MR. PEDERSEN:**

**7 Q. When you arrived, were you assigned a specific task to**  
**8 assist with the investigation?**

**9 A. Yes, I was.**

**10 Q. And what were you told to do?**

**11 A. I was asked to have the defendant have a seat in the back of**  
**12 my squad car.**

**13 Q. And prior to placing him in your squad car, did you do**  
**14 anything?**

**15 A. Yes, I searched him**

**16 Q. And when you searched him what, if anything, did you find?**

**17 A. I located a cell phone in one of his front pockets.**

**18 Q. Do you recall what type of cell phone that was?**

**19 A. It was a black Kyocera Sanyo cell phone.**

**20 Q. And what did you do with the cell phone after you took it**  
**21 out of the defendant's pocket?**

**22 A. I put it into a clear plastic evidence bag.**

**23 Q. And what did you do with that bag?**

**24 A. I gave it to the detectives on scene.**

**25 Q. Okay. And do you recall who the detectives were on the**

**Dodd - Direct**

1 scene?

2 A. Detective Nordberg and a bunch of others. I can't recall  
3 them all.

4 Q. Okay. Was Detective Nordberg the one that you gave the cell  
5 phone to?

6 A. Yes, it was.

7 Q. I'm going to show you what's been marked as Government's  
8 Exhibit 9. Could you take a look at that and tell me if you  
9 recognize it?

10 A. Yes, I do recognize it.

11 Q. What is it?

12 A. It's the cell phone I took off of the defendant.

13 Q. Did you then -- after you had placed the defendant in your  
14 squad car, were you then assigned to transport him to the Public  
15 Safety Building in Rockford?

16 A. Yes, I was.

17 Q. Thank you, Officer.

18 MR. PEDERSEN: I have no further questions.

19 CROSS EXAMINATION

20 BY MR. CAVER:

21 Q. Officer, you recovered the cell phone from the defendant?

22 A. Yes, sir.

23 Q. Did you make a report in this matter?

24 A. No, sir.

25 Q. Why not?

**Dodd - Cross**

1       A.   I didn't feel one was necessary.

2       Q.   Okay.   Even though you had recovered the cell phone?

3       A.   Yes.

4       Q.   And was there anybody else present when you searched  
5       Mr. Poke and you allegedly found this cell phone?

6       A.   I mean, within walking ten steps.

7       Q.   Anybody else observe you recover it from him?

8       A.   I don't recall.

9       Q.   Do you have any knowledge of anything else being recovered  
10       from Mr. Poke's pockets that day?

11       A.   Not to my knowledge, no.

12       Q.   So, you took his cell phone and didn't do a report on that?

13       A.   Correct.

14       Q.   Did you think it was important that you had recovered the  
15       cell phone?

16       A.   I search everybody before I put them in my car.   I don't do  
17       a report every time.

18       Q.   Okay.   But that's not my question.   My question is do you  
19       think it was important when you recovered the cell phone?

20       A.   No.

21       Q.   No.   Okay.   So, it wasn't an important piece of evidence?

22       A.   Not to my knowledge at that time.

23       Q.   Okay.   Thank you.

24               MR. PEDERSEN:   We have nothing further.

25               THE COURT:   You may step down, Officer.

**Cone - Direct**

**1 (Witness excused.)**

**2 MR. KARNER: Your Honor, the United States calls**  
**3 Detective David Cone.**

**4 (Brief pause.)**

**5 (Witness duly sworn.)**

**6 DAVID CONE, GOVERNMENT'S WITNESS, SWORN**

**7 DIRECT EXAMINATION**

**8 BY MR. KARNER:**

**9 Q. Sir, would you tell us your name, please, and spell your**  
**10 last name?**

**11 A. Yes. David Cone, C-o-n-e.**

**12 Q. How are you employed?**

**13 A. I am a detective with the Rockford Police Department**  
**14 assigned to the identification unit there.**

**15 Q. How long have you been a police officer?**

**16 A. I'm in my 22nd year of service with Rockford.**

**17 Q. And how long have you been in the identification unit?**

**18 A. I have been there since July of 2005.**

**19 Q. What are your responsibilities as a detective assigned to**  
**20 the identification unit?**

**21 A. My primary responsibilities are to respond to assist our**  
**22 patrol unit in the collection, documentation, and gathering of**  
**23 evidence in a number of different ways.**

**24 Q. Okay. Are one of your duties to recover latent fingerprints**  
**25 and to try and make identification of latent fingerprints?**

**Cone - Direct**

1       **A. It is, yes.**

2       **Q. Have you received training in that area of forensic science?**

3       **A. I have.**

4       **Q. Would you describe the training for the ladies and gentlemen**  
5       **of the jury?**

6       **A. I have attended both a basic latent impression school and**  
7       **also an advanced school, both of those 40-hour courses or**  
8       **week-long schools each.**

9       **Q. Okay. And what percentage of your duties are devoted**  
10       **towards fingerprint identification?**

11       **A. I would say at least 10 to 20 percent, maybe 25 percent of**  
12       **our everyday duties are devoted to latent print.**

13       **Q. Have you previously testified as an expert in fingerprint**  
14       **identification?**

15       **A. I have.**

16       **Q. Approximately how many times?**

17       **A. I believe I've only testified as an expert one time in a**  
18       **murder trial here in Rockford.**

19               **MR. KARNER: Your Honor, I would tender Detective Cone**  
20       **as an expert in fingerprint identification.**

21               **THE COURT: Do you wish to voir dire the witness?**

22               **MR. CAVER: No, Judge. No objection.**

23               **THE COURT: He may testify as an expert.**

24               **MR. KARNER: Thank you.**

25

**Cone - Direct**

**1 BY MR. KARNER:**

**2 Q. Sir, first of all, let's talk about how it's possible for a**  
**3 person to touch an item and leave their fingerprint. Can you**  
**4 explain how that happens?**

**5 A. Sure. A fingerprint is made up of slightly over 98 percent**  
**6 water. It's mainly an aqueous material that's secreted through**  
**7 perspiration. You have pores within the ridge structure of your**  
**8 fingerprints or of your fingers. That substance is subsequently**  
**9 placed or laid down on items that you might handle in your**  
**10 day-to-day activities.**

**11 Q. What is by definition a latent print?**

**12 A. A latent impression is a fingerprint impression that is not**  
**13 necessarily visible to the human eye. A latent impression would**  
**14 require some type of processing to be seen with a human eye or**  
**15 potentially some type of oblique lighting situation.**

**16 Q. It's a print of unknown origin?**

**17 A. It is.**

**18 Q. Okay. Now, as an investigator, what process and tools do**  
**19 you use to attempt to locate latent prints on surfaces?**

**20 A. We have several different techniques that we use. Probably**  
**21 the most commonly used technique would be by use of dusting**  
**22 powders. We also have chemical techniques that we use, as well,**  
**23 dependent upon the surface of the item that we're processing.**

**24 Q. Okay. And is there a way that you can, as an ID**  
**25 identification detective, obtain and preserve a latent print?**

**Cone - Direct**

1       **A.    Yes.**

2       **Q.    How?**

3       **A.    If we are processing with powders, we will use what we call**  
4       **a lift, which is just basically a sticky side of a piece of tape**  
5       **adhered to a background, which brings out the color in the**  
6       **powder that we're using.  If we are using a chemical process,**  
7       **most times we will photograph that latent impression from the**  
8       **chemical makeup of the processing itself.**

9       **Q.    Okay.  We've talked about what a latent print is, how you**  
10      **look for them, and how you preserve them.  The last step is how**  
11      **you make an identification between a person who leaves a known**  
12      **print and identify that with or match it with a latent print.**

13      **A.    Correct.  In order for me to make an identification, I need**  
14      **a latent impression of enough clarity and quantity of what we**  
15      **call ridge detail in order to make that impression or that**  
16      **comparison.**

17               **There are three levels of detail within a latent**  
18      **impression.  The level one detail characterizes that impression**  
19      **as either a loop, a whorl, or an arch.  I must have at least**  
20      **that amount of detail in order to make a comparison on that**  
21      **impression.**

22               **The other levels of detail deal with the ridge**  
23      **structure itself, the way the ridges either end or bifurcate**  
24      **into what we call minutiae, or the layperson will hear**  
25      **oftentimes the word points being counted within a print.  So,**

**Cone - Direct**

1 again, I need enough quality and quantity of that ridge detail  
2 in order to compare that to a known standard.

3 Q. Well, but what exactly are you comparing a latent print  
4 with, the ridges, the whorls, and all that detail you just  
5 described?

6 A. I would have to have a known inked impression to make that  
7 comparison. So, for example, if there was a suspect in a case  
8 and I could pull an arrest card or ten-print card that has the  
9 known inked impression, then I would compare that latent against  
10 that known inked impression.

11 Q. Now, in this case did you examine a firearm for the presence  
12 of any latent prints suitable for identification?

13 A. I did.

14 Q. I'm going to show you two exhibits marked Government's  
15 Exhibits 6 and 6A. Just be careful not to point that gun at  
16 anyone.

17 A. Okay.

18 Q. Do you recognize what those items are?

19 A. I do. This was a firearm brought to me by Detective  
20 Nordberg in the identification unit on July 6th of 2011 at  
21 approximately 9:00 o'clock in the evening.

22 Q. Okay. And why was that -- what responsibility -- let me  
23 rephrase that.

24 What did you do with that handgun and that handgun  
25 magazine?

**Cone - Direct**

1     **A. Detective Nordberg simply asked me to process the weapon for**  
2     **any latent evidence that might be located there. The first**  
3     **thing I did in that process was obtain DNA samples from the**  
4     **grips, trigger assembly, and a portion of the slide assembly of**  
5     **the firearm I also did the same with all the eleven live**  
6     **rounds of ammunition.**

7     **Q. Okay. And you mentioned DNA. You don't know if you**  
8     **recovered DNA from the handgun or not.**

9     **A. I do not, no.**

10    **Q. And you're not trained in DNA analysis, are you?**

11    **A. I am not.**

12    **Q. Who conducts DNA analysis?**

13    **A. Our state lab. The Illinois State Police conduct that**  
14    **analysis in their lab.**

15    **Q. Okay. In anticipation of your testimony, did you become**  
16    **familiar with the policy of the Illinois State Crime Lab when it**  
17    **comes to items of testing?**

18    **A. I have, yes.**

19    **Q. Okay. And as an ID detective, you have a lot of dealings**  
20    **with the Illinois State Crime Lab, don't you?**

21    **A. Yes, we do.**

22    **Q. Is there a high demand on DNA analysis?**

23    **A. Without a doubt, absolutely.**

24    **Q. As a result of that high demand, there are certain policies**  
25    **limiting what items and what cases items are accepted for DNA**

**Cone - Direct**

**1 analysis?**

**2 A. That is correct.**

**3 MR. CAVER: I'm going to object to the relevance.**

**4 MR. KARNER: Well, Mr. Caver said in his opening**  
**5 statement that we weren't going to hear anything about DNA, and**  
**6 I'm trying to talk about DNA.**

**7 THE COURT: Overruled.**

**8 BY THE WITNESS:**

**9 A. I'm sorry, Mr. Karner. Could you repeat the question?**

**10 BY MR. KARNER:**

**11 Q. Sure. Are you aware of any policies in place with the**  
**12 Illinois State Police Laboratory that does the DNA testing to**  
**13 limit what types of items can or cannot be -- or will or will**  
**14 not be tested?**

**15 A. I am familiar with that, yes.**

**16 Q. Explain the policy, the policy as it pertains to this case.**

**17 A. Yes. The policy in this case is the Illinois State Police**  
**18 will not accept nor will they process DNA evidence on firearms**  
**19 in possession cases.**

**20 Q. Like this?**

**21 A. Like this, yes.**

**22 Q. Okay. Now, did you examine 6 and 6A for the presence of any**  
**23 latent prints?**

**24 A. I did.**

**25 Q. And how did you do that?**

**Cone - Direct**

1       **A. In this particular case, I used a chemical process. We**  
2       **process these type of items using what basically is a Super Glue**  
3       **technique. So, it's a Super Glue processing followed by a**  
4       **chemical rinse after that Super Glue technique is finished.**

5               **Once the items have dried from the chemical rinse, we**  
6       **view them under an alternate light source, and that chemical**  
7       **that we use to wash these particular items, if there's latent**  
8       **evidence on those items, that will fluoresce under that**  
9       **alternate light source.**

10       **Q. When you did that, were you able to locate any latent prints**  
11       **suitable for comparison on either the gun marked Government's**  
12       **Exhibit 6 or the handgun's magazine marked Government's**  
13       **Exhibit 6A?**

14       **A. I did not.**

15       **Q. Now, does that mean those items had never been touched by a**  
16       **human being?**

17       **A. Absolutely not.**

18       **Q. What are the factors that influence your ability to recover**  
19       **prints, latent prints, suitable for comparison?**

20       **A. The biggest factor with firearms and latents, certainly, are**  
21       **a huge exception to the rule to recover latents of comparable**  
22       **value on firearms. The biggest reason is the structure of the**  
23       **gun, the fact that there are very few, if any, smooth, flat**  
24       **surfaces with which to obtain a decent latent impression.**

25               **Most of the surfaces of firearms are handled at the**

**Cone - Direct**

1 grip, which in most cases is either synthetic or it's textured  
2 and deeply grooved. All of those surfaces break up the ridge  
3 detail and make it impossible for me to make a comparison of any  
4 sort.

5 Q. Does temperature come into play?

6 A. Temperature has an effect on the firearms, as well. There  
7 are numerous factors. Friction will come into play when we're  
8 dealing with firearms. Firearms many times are drawn and put  
9 back into holsters. They're drawn and removed from waistbands.  
10 Any type of frictional surface with those firearms. Just  
11 sliding around on a floorboard on a seat of a car will damage or  
12 destroy latent evidence on these firearms, as well.

13 Q. What about are you familiar with people either being  
14 secretors or nonsecretors?

15 A. I am There is a small percentage, and I can't quote the  
16 exact percentage, but there is a small percentage of individuals  
17 who are what we call nonsecretors, in that they simply either do  
18 not perspire or do not to a level of which to leave latent  
19 impressions with which we can make a comparison to.

20 Q. Can moisture affect the recovery of latent prints?

21 A. Certainly. Any adverse weather factors will affect a latent  
22 impression, as well, yes.

23 MR. KARNER: I have nothing further, Judge.

24

25

**Cone - Cross****CROSS EXAMINATION**

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**BY MR. CAVER:**

**Q. Detective, I'm going to show you what I've marked previously as Defense Exhibits Number 1 and 2. Would you mind taking a look at those briefly?**

**A. Yes, sir.**

**Q. Do you recognize those photos?**

**A. I do not.**

**Q. You do not?**

**A. No, sir.**

**Q. You've never seen those before?**

**A. Not until today.**

**Q. Okay.**

**A. Yes, sir.**

**Q. Detective, I am going to -- well, first of all, how many firearms were recovered that day, if you know?**

**A. There was only one firearm brought to me, and that was brought to me by Detective Nordberg.**

**Q. And do you know whether there were any other firearms involved in the case?**

**A. I have no idea.**

**Q. Okay. Detective, if you would humor me. I don't want to touch the firearm myself, but the barrel of this gun, as I stand here, we're seated about three feet apart, and the gun is maybe a foot and a half from either of us. The barrel of that gun,**

**Cone - Cross**

1 meaning the portion of the gun -- you know a lot about these  
2 things. I don't. The portion of the gun that's in front of the  
3 trigger --

4 A. Yes.

5 Q. -- with the hole in it, it looks like there's a ribbon of  
6 metal that goes through the center of the gun. Is that fair?  
7 That goes the length of the barrel?

8 A. A ribbon of metal.

9 Q. A raised piece. So, there's almost like a raised midpiece?

10 A. Yes.

11 Q. Okay. And is that ridged?

12 A. Yeah. I mean, the barrel itself is ridged in several  
13 different places. Obviously, it's not a smooth, flat surface  
14 for me.

15 Q. Okay. But the portion -- and I guess maybe I'm just trying  
16 to describe this as best I can. There's a portion of it that's  
17 raised that goes the length of the barrel. There's also a  
18 portion above that part on the barrel of the firearm that  
19 appears to actually be smooth, black metal; is that fair?

20 A. Are you talking the barrel here?

21 Q. Yes.

22 A. Yes.

23 Q. Okay. And, actually, it goes roughly -- I'm sorry. Would  
24 you mind just picking it up for me?

25 A. Okay.

**Cone - Cross**

1     **Q. And it looks like there's a ridged area maybe about three**  
2     **inches directly above the grip of the gun.**

3     **A. Here?**

4     **Q. Yes. Thank you. And toward the front of the gun it looks**  
5     **like -- is it fair to say maybe six inches of smooth area toward**  
6     **the barrel of the gun on the top?**

7     **A. There might be four inches there. Four, four and a half.**

8     **Q. Four inches? Okay. Four inches.**

9             **Okay. Now, when you testified previously -- thank you.**  
10    **You can put it down. When you testified previously, you had**  
11    **said that the reason why ridged or grooved surfaces, textured**  
12    **surfaces don't hold latent prints well is because there's no --**  
13    **well, you explain it, if you don't mind.**

14    **A. Texturing on any surface breaks up the ridge detail of a**  
15    **fingerprint. So, in other words, if you look at your finger,**  
16    **you can physically see the lines that run through your**  
17    **fingertips. Those are what we call ridges, and there are**  
18    **thousands of them, and they flow in certain patterns, and that's**  
19    **how we characterize or classify fingerprints, as well.**

20             **Any time that you have a surface that is textured or**  
21    **not smooth by nature, that breaks up those ridges during the**  
22    **chemical process and makes it nearly impossible to count your**  
23    **ridges, to know whether there's a bifurcation, to know whether**  
24    **there's an ending ridge. In other words, to be able to make a**  
25    **comparison.**

**Cone - Cross**

1       **Q. So, it's fair to say then on a textured or a ridged surface,**  
2       **such as the ridged surfaces we were discussing on this gun, it**  
3       **would be very difficult to even recover a latent print from**  
4       **those surfaces?**

5       **A. A usable comparable latent, that's correct.**

6       **Q. Anything that would have been of any evidentiary value?**

7       **A. That is correct.**

8       **Q. Now, the smooth surface, where we were talking toward the**  
9       **barrel of the gun for about four inches toward the top of the**  
10       **barrel that appeared to be a smooth metal surface, now, in terms**  
11       **of a smooth surface like the glass on a cell phone or even a**  
12       **smooth surface here, is it fair to say that it's much more**  
13       **likely that you would find a latent print or even a full**  
14       **fingerprint of evidentiary value if it were present?**

15       **A. I would only make the argument that more than likely you**  
16       **would not, only in that firearms are not typically handled by**  
17       **the barrel. No one picks up a firearm by the barrel. We pick**  
18       **up our firearms by the grips and the trigger. So, although it**  
19       **is feasibly possible, in this case this gun also has raised**  
20       **ridges and some texturing in that area that you're describing in**  
21       **front of the slide mechanism**

22       **Q. If I may?**

23       **A. In this area here is raised from here and could break up a**  
24       **fingerprint.**

25               **MR. CAVER: Judge, do you mind if I just run my finger**

**Cone - Cross**

1       **along it?**

2               **THE COURT: Help yourself.**

3               **MR. CAVER: Thanks.**

4       **BY MR. CAVER:**

5       **Q. But you said it's fair that people don't typically handle**  
6       **handguns by the barrel?**

7       **A. Correct.**

8       **Q. So, that's why you wouldn't typically find any sort of**  
9       **evidentiary value in a fingerprint, or it's less -- I'm sorry.**

10              **So, it's less likely to find any fingerprints on them**  
11       **simply by the fact that it's not common that they're handled by**  
12       **the barrel?**

13       **A. I would say that's correct.**

14       **Q. Okay. So, it looks like we've got a lot of raised areas on**  
15       **this handgun. Is that common among handguns, that significant**  
16       **portions of them are textured or raised or ridged?**

17       **A. It tends to be, yes.**

18       **Q. So, it's typical then that you're not -- it's going to be**  
19       **very difficult to find fingerprints on these firearms?**

20       **A. It's extremely difficult to find a comparable latent**  
21       **impression. We find smudges, smears, other portions of ridges,**  
22       **just not of the quality and quantity of detail with which I need**  
23       **to make a conclusive comparison.**

24       **Q. Okay. Now, is there any sort of evidence that lends itself**  
25       **to -- well, I'm going to start over.**

**Cone - Cross**

1           **When a person handles something with textured or ridged**  
2           **surface and is not handling that surface with gloves, is it more**  
3           **likely that any other sorts of evidence can be collected from**  
4           **ridged or grooved surfaces?**

5           **A. Certainly.**

6           **Q. And what sort of evidence would that be?**

7           **A. Biological evidence can be collected from any surface. DNA,**  
8           **blood, semen, anything along those lines.**

9           **Q. So, because we're kind of taking a hit on the evidentiary**  
10          **value of a firearm because it's got these surfaces, because it's**  
11          **hard to find fingerprints, would that make it more important**  
12          **then to search these sorts of items for other sorts of**  
13          **evidentiary value?**

14          **A. Well, and, again, that's part of our SOP with firearms. Due**  
15          **to the inability of locating the usable latent evidence, as I**  
16          **explained earlier, we will swab areas that we believe to be**  
17          **commonly handled by the firearm or by the person as it relates**  
18          **to the firearm. And, again, many of these surfaces that we swab**  
19          **are again those same surfaces that are textured that would be**  
20          **very difficult for latent recovery to begin with.**

21          **Q. And did you do that in this case?**

22          **A. Yes.**

23          **Q. And you had testified earlier that it's not the Illinois**  
24          **State Police policy and procedure to test biological evidence**  
25          **such as DNA in possession cases?**

**Cone - Cross**

1       **A. That's correct, sir.**

2       **Q. And does the Rockford Police ever contract with any other**  
3       **agencies or corporations, for that matter, to test DNA evidence?**

4       **A. I wouldn't have an answer for you there, sir. I do not**  
5       **know.**

6       **Q. And you've been in the ID unit for approximately eight**  
7       **years?**

8       **A. Yes, since 2005. Correct.**

9       **Q. It's fair to say that you've been collecting biological**  
10       **evidence such as DNA in those eight years?**

11       **A. Absolutely.**

12       **Q. And is it your testimony then that you're not aware of a**  
13       **single instance in those eight years where the Rockford Police**  
14       **has used any other agency besides the Illinois State Police to**  
15       **do its biological evidence testing?**

16       **A. Off the top of my head, not that I'm personally aware of.**

17       **Q. If it was important, you could?**

18       **A. Well, sure. I mean, if I had an independent recollection of**  
19       **a certain time where --**

20       **Q. I'm sorry. I'm sorry. I should have been more specific.**

21               **If it was important to get that biological evidence**  
22       **tested, you could do it with some sort of agency or some other**  
23       **private corporation; is that fair?**

24       **A. I wish I could answer that intelligently. I don't know what**  
25       **our protocols and procedures within our unit would be in**

**Cone - Cross**

1 relation to that. That would be a supervisory decision, not  
2 only made by my supervisor, but probably, due to the cost  
3 involved, would have to be made by his supervisor and up the  
4 chain of command dependent upon the case.

5 Q. So, it wouldn't be because it's not possible to be done.

6 A. No.

7 Q. It would be because it would be administrative decisions or  
8 cost or some other --

9 A. Well, yes. Certainly it's beyond my scope of the decisions  
10 that I make on a daily basis.

11 Q. Above your pay grade?

12 A. Yes.

13 Q. Okay. I understand.

14 In a possession case where a firearm is possessed, do  
15 you believe -- as an expert witness, do you believe that it  
16 would have been important to test that biological evidence?

17 MR. KARNER: Judge, I object. Relevance.

18 THE COURT: Overruled.

19 BY THE WITNESS:

20 A. I think at any point in time, whether it's the unit that I  
21 work in, the police department I work for, the Illinois State  
22 Police, there has to be at some point in time the ability to  
23 triage. There has to be a point where you just can't do any  
24 more as a business, as an agency, as a department, or none of  
25 the work would get done.

**Cone - Cross**

1           So, I do believe -- because I know our unit triages, as  
2 well, dependent upon cases. That's just the world we live in,  
3 and that's their set protocol and their policy, and that's what  
4 we have to abide by.

5       Q. And this case just wasn't important enough to test that  
6 evidence.

7       A. It's just beyond the scope of the Illinois State Police  
8 policy. That would be a question for the Illinois State Police,  
9 I would think, as to what they feel the importance is of testing  
10 possession cases as it relates to DNA.

11      Q. But I'm asking you in the context of the Rockford City  
12 Police. Your department, other than with administrative  
13 hurdles, could have made a decision, even though you may not  
14 personally have made that decision.

15           MR. KARNER: Judge, I object to the form of the  
16 question.

17           THE COURT: What's wrong with it?

18           MR. KARNER: Argumentative.

19           THE COURT: Well, I don't believe it's argumentative,  
20 but I think we've gone past the point of relevance.

21           MR. CAVER: Okay. Thank you, Judge. Judge, if I may  
22 just have a moment.

23           (Brief pause.)

24       BY MR. CAVER:

25      Q. Were you able to get prints off of the cell phone in this

**Cone - Redirect**

1 case?

2 A. I'm not aware of a cell phone.

3 Q. Okay. So, you didn't test any cell phone?

4 A. No cell phone was brought to me regarding this case, no.

5 Q. Okay.

6 MR. CAVER: Thank you, Judge.

7 **REDIRECT EXAMINATION**

8 **BY MR. KARNER:**

9 Q. You're aware that defendants can request testing?

10 A. Yes.

11 Q. Was there any request for DNA testing by the defense in this  
12 case?

13 A. Not to my knowledge.

14 MR. KARNER: Nothing further.

15 THE COURT: Anything more, Mr. Caver?

16 MR. CAVER: Nothing, Judge.

17 THE COURT: You may step down, Detective.

18 THE WITNESS: Thank you, Judge.

19 THE COURT: You're welcome.

20 (Witness excused.)

21 MR. PEDERSEN: The United States calls Bruce Voyles.

22 (Brief pause.)

23 (Witness duly sworn.)

24

25

**Voyles - Direct**

**BRUCE VOYLES, GOVERNMENT'S WITNESS, SWORN**

**DIRECT EXAMINATION**

**BY MR. PEDERSEN:**

**Q. Could you state your name and spell your last name, please?**

**A. It's Bruce Voyles, V-o-y-l-e-s.**

**Q. How are you currently employed?**

**A. I'm a detective with the Rockford Police Department.**

**Q. How long have you held that position?**

**A. Thirteen years.**

**Q. How long have you been a police officer?**

**A. Twenty years.**

**Q. What's your current assignment?**

**A. I'm assigned to the identification unit.**

**Q. And how long have you been assigned there?**

**A. Thirteen years.**

**Q. Okay. So, the entire time as a detective you spent in the identification unit?**

**A. Yes.**

**Q. And what were your duties in that unit?**

**A. I'm responsible for the processing and documentation of crime scenes, examination of latent fingerprint evidence, as well as examination of computer, cell phone evidence.**

**Q. And just to be clear, for the purposes of your analysis, a cell phone is basically a tiny computer?**

**A. Correct.**

**Voyles - Direct**

1     **Q.   Okay.  It has the same type of processors and -- well, not**  
2     **the same type, but a type of electronic processor similar to a**  
3     **computer?**

4     **A.   Similar storage capabilities, correct.**

5     **Q.   And have you previously been called as a witness and been**  
6     **qualified as an expert in the field of forensic examination of**  
7     **computers?**

8     **A.   Yes.**

9     **Q.   And that would include cell phones?**

10    **A.   Correct, yes.**

11    **Q.   And you've done that on at least ten occasions?**

12    **A.   Approximately, yes.**

13    **Q.   Has that just been in state, or has that also been in**  
14    **federal court, as well?**

15    **A.   State court.**

16    **Q.   And, in addition, as part of your training, have you been**  
17    **certified by any associations?**

18    **A.   Yes.  I'm a certified forensic computer examiner through the**  
19    **International Association of Computer Investigative Specialists.**

20    **Q.   And in order to become certified by that association, is**  
21    **there any testing involved?**

22    **A.   Yes.**

23    **Q.   What is the testing involved?**

24    **A.   There are several.  For the initial certification, it's**  
25    **several exams where hard drives are sent to you or media sent to**

**Voyles - Direct**

1       you for examination, and there's questions and also peer review.

2       Q.   Once you become certified, is there any recertification  
3       that's required?

4       A.   Yes, every three years we have to recertify.

5       Q.   And when was the last time that you were recertified?

6       A.   2011.

7               MR. PEDERSEN:  I would tender the witness as an expert  
8       in the field of forensic examination of computers and cell  
9       phones.

10              THE COURT:  Do you wish to voir dire the witness?

11              MR. CAVER:  No, Judge.  No objection.

12              THE COURT:  Any objection to him testifying as an  
13       expert?

14              MR. CAVER:  No, Judge.

15       BY MR. PEDERSEN:

16       Q.   I'm going to call your attention to July 30th of 2012.  Were  
17       you asked to examine a particular cell phone by another agency?

18       A.   Yes.

19       Q.   And do you recall the type of cell phone that you were asked  
20       to examine?

21       A.   It was identified as a Sanyo cell phone as a Cricket  
22       provider.

23       Q.   I'm going to show you what's been marked as Government's  
24       Exhibit 9.  Do you recognize that exhibit?

25       A.   Yes, I do.

**Voyles - Direct**

**1 Q. What is it?**

**2 A. This is the cell phone that I was asked to conduct an**  
**3 examination of.**

**4 Q. And you indicated that it was a Sanyo cell phone with a**  
**5 Cricket provider. You mean Cricket, that's the company that**  
**6 provides the phone service?**

**7 A. Yes, the cell phone service.**

**8 Q. Is there a manufacturer that manufactures phones for Sanyo?**

**9 A. Yes. In this case Kyocera is the actual manufacturer of the**  
**10 phone.**

**11 Q. And on the back of the phone, is there an imprint that**  
**12 indicates that it was made by Kyocera?**

**13 A. Correct.**

**14 Q. And Kyocera, is that spelled K-y-o-c-e-r-a?**

**15 A. Yes.**

**16 Q. And when you received the cell phone, was it in a sealed**  
**17 condition in that bag?**

**18 A. Yes, it was.**

**19 Q. After you received the phone and were asked to examine it,**  
**20 what did you do?**

**21 A. I received a phone from the property and evidence division,**  
**22 returned it to my office. At that time I opened the package,**  
**23 removed the battery compartment or the battery from the battery**  
**24 compartment, and verified the identification number or MEID**  
**25 number on the back of the battery as being the same as what was**

**Voyles - Direct**

1       **written on the actual search warrant.**

2       **Q. And when you did that, did you confirm it was the correct**  
3       **phone?**

4       **A. Yes.**

5       **Q. What steps then did you take to examine the phone?**

6       **A. Well, in this case, the phone actually also contained a**  
7       **micro SD card for additional storage. That was removed from the**  
8       **phone, and I created a forensic image or a mirror copy of the**  
9       **micro SD card. That was examined separately from the phone.**  
10       **The phone was attached to my department computer, and a software**  
11       **program designed by the Paraben Company for cell phone**  
12       **extraction was used to extract the text messages from the phone.**

13       **Q. Now, are both of those programs that you used to examine the**  
14       **memory card and the actual cell phone that you talked about, are**  
15       **those software -- is that software generally accepted by others**  
16       **in your field as the proper software to use when examining cell**  
17       **phones?**

18       **A. Yes.**

19       **Q. Now, regarding the memory card, what information was**  
20       **contained on the memory card?**

21       **A. That type of device is used to store usually your photos,**  
22       **videos, along those lines. I believe a contact listing was also**  
23       **stored on it. A business card contact was stored on it in an**  
24       **electronic manner.**

25       **Q. What about on the cell phone when you used the Paraben**

**Voyles - Direct**

1     **software system? What type of information are you able to**  
2     **extract from the cell phone using that system?**

3     **A. That I was able to extract the text messages, the multimedia**  
4     **messages, as well as contact list call logs.**

5     **Q. And when you used that software in this case, were you able**  
6     **to extract text messages along with the contact list from the**  
7     **phone?**

8     **A. Yes, I was.**

9     **Q. And when the software extracts that information, what**  
10    **happens to the information after you extract it?**

11    **A. Well, it allows me to prepare it into a report format. In**  
12    **this case it was in a PDF format. All the information was**  
13    **placed in a PDF format. I then archived that to a CDR, as well**  
14    **as the actual -- all the information that was extracted from the**  
15    **phone.**

16    **Q. And then did you place those compact disks in a sealed**  
17    **evidence bag?**

18    **A. Yes, I did.**

19    **Q. I'm going to show you what's been marked as Government's**  
20    **Exhibit 19. Do you recognize that?**

21    **A. Yes.**

22    **Q. What is it?**

23    **A. It's the CDR -- it's actually three CDRs containing the data**  
24    **from the cell phone, as well as the data from the memory card,**  
25    **the micro SD card from the cell phone.**

**Voyles - Direct**

1     **Q. And you said that there's a report that the software**  
2     **generates that you put in PDF form Is that just a type of file**  
3     **that you can store on a disk or a computer?**

4     **A. Yes.**

5     **Q. And are you also able to print out hard copies then on paper**  
6     **of that report?**

7     **A. Yes.**

8     **Q. I want to show you what's been marked as Government's**  
9     **Exhibit 21. Have you seen that before?**

10    **A. Yes.**

11    **Q. What is Government's Exhibit 21?**

12    **A. It's a section, a printed section, of the PDF report that I**  
13    **prepared from the acquired data from the cell phone.**

14    **Q. And specifically Government's Exhibit 21, does that only**  
15    **contain certain text messages that were generated by the report**  
16    **that you created with the Paraben software?**

17    **A. Yes.**

18           **MR. PEDERSEN: I move to admit Government's Exhibit 21,**  
19    **your Honor.**

20           **THE COURT: Any objection?**

21           **MR. CAVER: No, Judge.**

22           **THE COURT: 21 is admitted.**

23           **(Government's Exhibit 21 was offered and received in**  
24    **evidence.)**

25

**Voyles - Direct**

**1 BY MR. PEDERSEN:**

**2 Q. All right. I'm going to show you the first page of**  
**3 Government's Exhibit 21. That's the cover sheet that is printed**  
**4 out when you prepare the report; is that right?**

**5 A. Correct.**

**6 Q. Okay. And then Page 2. That shows certain blocks of**  
**7 information; is that correct?**

**8 A. Yes.**

**9 Q. And each block has seven different headings?**

**10 A. Yes.**

**11 Q. It starts with date?**

**12 A. Correct.**

**13 Q. And then what are the other headings?**

**14 A. Read, meaning that the text message had actually been read**  
**15 by the recipient.**

**16 Q. Okay. Going back to date, what is date?**

**17 A. Oh, I'm sorry. That first one is July 5th, 2011, at**  
**18 4:40 p.m.**

**19 Q. All right. We're going to have it blown up here for you so**  
**20 you can -- there we go. It's a little easier to read.**

**21 So, you said date. That is a date and time, but what**  
**22 does that indicate?**

**23 A. Oh, I'm sorry. The date and time that the message was**  
**24 either read or received, depending on the following boxes.**

**25 Q. The next line indicates read. What does that mean?**

**Voyles - Direct**

1       A.   That the message was read by the recipient.

2       Q.   The address line?

3       A.   Is the number that the message was sent to.

4       Q.   What if the message was received? What would that address  
5       line indicate? Incoming message. What would the number show?

6       A.   The number that it was sent from would be in that box.

7       Q.   Okay. So, depending on whether the message was sent or  
8       received, the address line would show the number that it either  
9       was sent from or it was sent to?

10      A.   The other recipient it was supposed to, yes.

11      Q.   The next line indicates status. What is that for?

12      A.   In this case if it had been -- none shows that there are no  
13      errors in sending the message. There would be a message if it  
14      was saved as a draft or a failed communication.

15      Q.   The next line says type. What does that mean?

16      A.   That's indicating that this was a sent message from the  
17      phone to the recipient.

18      Q.   The next line, subject?

19      A.   Subject is usually -- it's a box that fills in with  
20      multimedia messages or video or photo messages, if you put a  
21      header, identifying the photo.

22      Q.   But text messages wouldn't have the subject?

23      A.   No, usually not.

24      Q.   And then body, what does that mean?

25      A.   That's the actual contents of the text message.

**Voyles - Direct**

1     **Q. All right. Now, the way that the software program that you**  
2     **use, the Paraben software, does it generate the report by the**  
3     **date that the message was sent or received?**

4     **A. Yes. And then it does it in descending order. So, the last**  
5     **message received would be the first one indicated in the report.**  
6     **The first message that was sent would be the last message in the**  
7     **report.**

8     **Q. So, reverse chronological order?**

9     **A. Yes.**

10    **Q. Now, Government's Exhibit 21 doesn't contain all the text**  
11    **messages that you extracted using the Paraben software; is that**  
12    **correct?**

13    **A. Correct.**

14    **Q. I'm going to start then with the last page, Page 16, and**  
15    **work back and just go through the messages with you. So,**  
16    **starting on June 23rd, going forward to July 5th of 2011, the**  
17    **first message would have been the one that we have indicated**  
18    **here on Page 206 that's dated June 23rd of 2011 at 3:44 p.m.?**

19    **A. Yes.**

20    **Q. And was that an outgoing message?**

21    **A. That was a sent message from the phone to the address of**  
22    **(XXX) - XXX- XXXX.**

23    **Q. And what was the text?**

24    **A. "This low."**

25    **Q. The next message then?**

**Voyles - Direct**

1     **A. Was a received message. The type shows inbox. So, that was**  
2     **received by this phone from the address of (XXX)-XXX-XXXX, and**  
3     **that indicates -- the content was "Ok."**

4     **Q. And then going to the next page, on June 25th there was a**  
5     **sent message, is that correct, at 8:06 a.m.?**

6     **A. Yes.**

7     **Q. And what was the text?**

8     **A. "This my new number bro."**

9     **Q. And the next message a few minutes later?**

10    **A. Is a received message, "Hoo dis."**

11    **Q. And then the next message actually is on the top of Page 15**  
12    **there, but then also on Page 14 because it goes in reverse**  
13    **order; is that right?**

14    **A. Correct.**

15    **Q. So, the text of the message was --**

16    **A. "Low wit the good."**

17    **Q. And that was what type of message? That was a sent message?**

18    **A. That was a sent message.**

19    **Q. If we could go up to Page 14 then. That indicates it was a**  
20    **sent message?**

21    **A. Yes.**

22    **Q. All right. Then if we could go to Page 12, and the message**  
23    **at the bottom of the page there, that was a sent message on**  
24    **June 26th of 2011?**

25    **A. Yes.**

**Voyles - Direct**

1       **Q. And you have to go to the next page, 13, to see what the**  
2       **text was; is that correct?**

3       **A. Yes.**

4       **Q. And what was it?**

5               **THE COURT: You're using 12 and 13. I don't find them**  
6       **on the copy of the exhibit that I have. Where are you getting**  
7       **those numbers?**

8               **MR. PEDERSEN: It's the number -- I could give you**  
9       **the -- it's just the numbers of the pages in order, your Honor.**  
10       **But I could use the numbers on the actual pages.**

11              **THE COURT: Would you do that for me, please?**

12              **MR. PEDERSEN: Yes, I can do that.**

13              **MR. CAVER: Judge, if I may, it would be easier for me**  
14       **if we could just go by the number at the bottom of the page, if**  
15       **that's possible.**

16              **THE COURT: Right. That's what we're going to use.**

17              **MR. CAVER: Thank you.**

18              **MR. PEDERSEN: That's fine.**

19       **BY MR. PEDERSEN:**

20       **Q. All right. So, now we're on Page 205 -- or I'm sorry --**  
21       **Page 200 in Government's Exhibit 21. The body of that text on**  
22       **June 26th was "This daylow this new number. "**

23       **A. Yes.**

24       **Q. Let me go to Page 199, the page above that. On**  
25       **June 26th the next message after that at 4:19.**

**Voyles - Direct**

1       **A. Yes. It's a received message by the phone.**

2               **THE COURT: You know, I don't have a 199 in the copy**  
3       **that I have. You don't have a good copy, do you?**

4               **MR. PEDERSEN: Yes, I do.**

5               **THE COURT: I have two 200s, and I took one out, but I**  
6       **don't have 199.**

7               **MR. PEDERSEN: This has all the exhibits. It's tabbed.**

8               **THE COURT: Can I have this, or do you want it back?**

9               **MR. PEDERSEN: Yes, you can have that.**

10              **THE COURT: All right. I'm with you. 199.**

11       **BY MR. PEDERSEN:**

12       **Q. All right. This is at 4:19. Is that a reply from the same**  
13       **address as the previous message at 4:19 p.m.?**

14       **A. Yes. This was received by the previous address at 4:19.**

15       **Q. It was received from the previous address?**

16       **A. Yes. It was, as you said, a response from that previous**  
17       **sent message. This one was coming back to the phone.**

18       **Q. And what does it say?**

19       **A. "Got it."**

20       **Q. All right. Then we'll go to the next page, which is 197,**  
21       **and those are two messages that occurred on June 27th of 2011.**  
22       **The first one was at 12:09 p.m. and 13 seconds?**

23       **A. Yes.**

24       **Q. And that was what type of message?**

25       **A. This was a received message from (XXX) - XXX-XXXX stating,**

**Voyles - Direct**

**1        "Who is this. "**

**2        Q.    And then was there an attempt to reply?**

**3        A.    Yes.    It's showing failed.**

**4        Q.    Okay.**

**5        A.    And sent back to that same number, and it says, "Daylow. "**

**6        Q.    All right.    Then the next page, 180, those are messages from  
7        July 2nd of 2011; is that correct?**

**8        A.    Yes.**

**9        Q.    And the first message on that date?**

**10       A.    Is a sent message from the phone with the body of the text,  
11       "U still want that," and it's sent to the address of  
12       (XXX) XXX-XXXX.**

**13       Q.    What's the next message?**

**14       A.    That's a received message from that same address with the  
15       body of the text, "What the 3.0 yea. "**

**16       Q.    And then the next message after that is on both Page 180 and  
17       179; is that right?**

**18       A.    Correct.**

**19       Q.    And that occurred just seconds later on July 2nd?**

**20       A.    Yes.**

**21       Q.    And that was a sent message?**

**22       A.    Yes.**

**23       Q.    And what was the text?**

**24       A.    "Ok. "**

**25       Q.    And then the message after that, what time was that?**

**Voyles - Direct**

1     **A. That was on July 2nd, also, 2:24:20. It was a received**  
2     **message from the same address, "What u on yo way ok."**

3     **Q. Then we go two pages up, 169. On Page 169 the date is**  
4     **July 5th of 2011 at 3:08 a.m is the first message?**

5     **A. Yes.**

6     **Q. And that was a what type of message?**

7     **A. That was a received message.**

8     **Q. What did the text indicate?**

9     **A. To quote, "No trap. She doesn't want to fuck someone else**  
10    **just me. I just wanted some shit but I'm broke."**

11    **Q. And broke is on the next page; is that right?**

12    **A. Yes.**

13    **Q. Okay. The message after that then, what type of message was**  
14    **it, and what was said?**

15    **A. That also is in the inbox. So, it's a received one, saying,**  
16    **"I get paid Friday. You front me?"**

17    **Q. And that was the same number as the previous message?**

18    **A. Yes.**

19    **Q. And then the next message after that?**

20    **A. That is a sent message to the address of (XXX) XXX-XXXX, and**  
21    **the body of the text is "Yes I got that's cool."**

22    **Q. And the next message after that actually starts on the**  
23    **previous page, 167?**

24    **A. Yes. 168.**

25    **Q. I'm sorry. 168. And that is what type of message?**

**Voyles - Direct**

1       **A. This is a received message from this same number.**

2       **Q. Okay.**

3       **A. Indicating the body of the text, "You sure? How much is the**  
4       **prices?"**

5       **Q. Okay. And the message that came in right after that message**  
6       **from the same number was what?**

7       **A. That's a sent message from this phone to that same address**  
8       **indicating -- the body of the text is "\$20."**

9               **THE COURT: Let's take a break. Folks, I'll release**  
10       **you for our morning break. Let's come back at 11:00 o'clock.**  
11       **Again, I want to remind you that as jurors in this case, you're**  
12       **not to discuss the case among yourselves or with anyone else or**  
13       **permit anyone to discuss it in your presence. Refrain from**  
14       **exposing yourself to any media accounts of the trial while it's**  
15       **in progress. Do not do any independent investigation of the**  
16       **case by doing any research, attempting any testing, attempting**  
17       **any communication with any other person, including your fellow**  
18       **jurors. We'll see you in a few minutes.**

19               **(The following proceedings were had in open court, out of**  
20       **the presence and hearing of the jury:)**

21               **THE COURT: Detective Voyles, you understand you're not**  
22       **to discuss your testimony with anyone. We'll resume here at**  
23       **11:00 o'clock.**

24               **MR. CAVER: Judge, if I may, just a brief matter. I**  
25       **had subpoenaed Detective Joe Stevens to be here. I know he**

**Voyles - Direct**

1 worked last night. I told him to be here at 11:00. I know  
2 since it's a late break, I told him I'd do everything I could to  
3 try to get him a message if he wasn't going to be needed at  
4 11:00 because he's trying to sleep. Can I text him and ask him  
5 to be ready after lunch so he can go home and get some sleep?

6 THE COURT: You can put him on out of order, if you  
7 want.

8 MR. CAVER: So, even later.

9 MR. KARNER: We're going to be done -- we'll be done  
10 this morning.

11 MR. CAVER: Oh, you will.

12 MR. KARNER: Yes.

13 MR. CAVER: Okay. So, would 1:30 be okay if I told  
14 Detective Stevens, or do you want me to have him -- because  
15 he'll be here at 11:00, unless I --

16 THE COURT: Why don't you tell him 2:00 o'clock.

17 MR. CAVER: Be here at 2:00. Thank you, Judge.

18 (Brief recess.)

19 THE COURT: Bring the jury in, Tim

20 (The following proceedings were had in open court, in the  
21 presence and hearing of the jury:)

22 THE COURT: Okay, Mr. Pedersen. You may continue.

23 MR. PEDERSEN: Thank you.

24 BY MR. PEDERSEN:

25 Q. When we broke, we were discussing several text messages back

**Voyles - Direct**

1 and forth around 3:00 a.m in the morning between the phone  
2 that's been marked as Government's Exhibit 9 and another number  
3 (XXX) XXX-XXXX, and I want to pick up there. The next message  
4 that we left off at would have been on July 5th of 2011 at  
5 3:18 a.m; is that correct?

6 A. Yes.

7 Q. And what type of message, and what was the text?

8 A. It was a received message from that phone number. The body  
9 of the text is "Alright you should do me a 40 though if  
10 possible."

11 Q. What's the next message that is on both Page 167 and 168  
12 then?

13 A. It's a sent message to the same number stating simply, "Ok."

14 Q. Is there another message that same date a couple minutes  
15 later on Page 167?

16 A. Yes.

17 Q. What type of message, and what was the text?

18 A. It's a sent message to the same number, and it indicates in  
19 the body of the text, "How long? Sleep."

20 Q. Is there a reply to that message then?

21 A. Yes. The same number at the bottom of the text is "Sweet  
22 were pickin some people and then gettin our car and come down  
23 there real quick."

24 Q. Is there a sent message then from the phone marked as  
25 Government's Exhibit 9 to that same number then a few seconds

**Voyles - Direct**

1 later?

2 A. Yes. Simply -- the text simply stated, "Ok. "

3 Q. What's the next message then on Page 166?

4 A. It's also on July 5th, same number again. It's a received  
5 message. Body of the text is "Like mebbe like a half hour. "

6 Q. What's the next message?

7 A. A sent message. The text is simply "Ok. " Again to the same  
8 address or phone number.

9 Q. And that was just a few minutes later or a minute later,  
10 3:22 a.m. ?

11 A. Yes.

12 Q. Okay. And then also at 3:22 a.m., a few seconds later, is  
13 there another received message?

14 A. Yes. It's a received message, again the same address  
15 contact number. The content of the text was "Like a half hour  
16 ish. "

17 Q. Is there another message that's sent around that same time  
18 from that same number?

19 A. Yes. Received a message. The body of the text is "Cool.  
20 I'll pay you Friday night for sure. And if you have good shit  
21 I'll buy more too. "

22 Q. And then on Page 165 was there a sent message to that same  
23 number at 3:24 a.m. ?

24 A. Yes. And the content is simply, "Its good. "

25 Q. And the content you said was "Its good"?

**Voyles - Direct**

1       **A.   Yes.**

2       **Q.   Then the next page, Page 161, are those two more messages**  
3       **involving that same (XXX) XXX-XXXX number that you just**  
4       **testified to several messages around 3:00 a.m on July 5th of**  
5       **2011?**

6       **A.   Yes.**

7       **Q.   And what time were these messages?**

8       **A.   They're approximately 4:23 p.m and 4:40 p.m in the**  
9       **afternoon of July 5th.**

10      **Q.   And what was the first -- the one at 4:23, what was the**  
11      **text, what type of message?**

12      **A.   It's a received message with the content of the text "That**  
13      **was some good shit."**

14      **Q.   And was there a reply to that message?**

15      **A.   Yes.   The body was simply "Ok."**

16      **Q.   And that was at 4:40 p.m ?**

17      **A.   Yes.**

18               **MR. PEDERSEN:   I would move to admit Government's**  
19      **Exhibit 19.   That was the three compact disks.**

20               **THE COURT:   Any objection to 19?**

21               **MR. CAVER:   No, Judge.**

22               **THE COURT:   Nineteen is admitted.**

23               **(Government's Exhibit 19 was offered and received in**  
24      **evidence.)**

25               **MR. PEDERSEN:   I have no further questions.**

**Voyles - Cross**

**1 THE COURT: Cross.**

**2 CROSS EXAMINATION**

**3 BY MR. CAVER:**

**4 Q. Detective Voyles, when you were working with the cell phone**  
**5 in this case, did you ever conduct any fingerprint testing on**  
**6 it?**

**7 A. No, I did not.**

**8 Q. And do you conduct fingerprint testing routinely as part of**  
**9 your duties in the ID department?**

**10 A. Yes, I do.**

**11 Q. And would a large glass surface, such as the surface on the**  
**12 cell phone recovered in this case that you tested, would that**  
**13 lend itself well to residual fingerprints?**

**14 A. Possibly.**

**15 Q. Let me -- I'm sorry. Let me ask this. Is there any surface**  
**16 that you can think of that would better retain fingerprints than**  
**17 a large, unscratched glass surface?**

**18 A. No.**

**19 Q. Okay. And that's pretty much -- that would be the gold**  
**20 standard? I mean, if there were going to be fingerprints on**  
**21 something -- if there were fingerprints on a large glass**  
**22 surface, they would be easily recovered?**

**23 A. I can't say easily recovered, but it's probably one of the**  
**24 better surfaces for fingerprints.**

**25 Q. Now, Detective Voyles, Mr. Pedersen went over ad nauseam**

**Voyles - Cross**

1       **about the text messages. Are you familiar with a pen register?**

2       **A. Yes.**

3       **Q. And what is a pen register?**

4       **A. Are you talking security code pins?**

5       **Q. I'm sorry. Pen, p-e-n, register for determining what sorts**  
6       **of phone numbers are used by what individuals?**

7       **A. No, I'm not familiar with that.**

8       **Q. Okay. Are there ways to determine who the -- when you have**  
9       **a cell phone, are there ways to determine through the phone**  
10       **company to whom the cell phone is registered?**

11       **A. Yes.**

12       **Q. Okay. And was that done in this case to your knowledge?**

13       **A. Not to my knowledge.**

14       **Q. Okay. And so, you don't know whether this cell phone was**  
15       **borrowed, for instance?**

16       **A. I have no idea about ownership, no.**

17       **Q. Okay. Now, in terms of biometrics, to your knowledge does**  
18       **this cell phone -- does it require a particular user to be able**  
19       **to use the cell phone?**

20       **A. I didn't find any kind of security devices on it, as far as**  
21       **pin codes or access codes, no.**

22       **Q. And in your background, training, and experience of working**  
23       **with cell phones, have you ever found a cell phone to be quote,**  
24       **unquote locked with like a pin code in order to be able to use**  
25       **it?**

**Voyles - Cross**

1       A.   Yes.

2       Q.   Okay.  When you recovered this phone, was it in any sort of  
3       state that would have restricted its use in that manner?

4       A.   No.

5       Q.   So, if you or I had picked up that phone, we would have been  
6       able to access most of the phone's functions without entering  
7       some sort of biometric data, like a fingerprint or a pin number?

8       A.   Yes.

9       Q.   With that information, you can't sit here today to testify  
10      the identity of any individual who sent any text message,  
11      correct?

12      A.   No, I cannot.

13      Q.   And is it fair that you can't testify, even with the Paraben  
14      report and the received text messages that that software  
15      extracted from the cell phone, who read those text messages?

16      A.   No.

17      Q.   So, in terms of the user's identity at any given time, at  
18      any period of time covered by the text messages recovered that  
19      are reflected in that report, you can't tell who the user of the  
20      phone was?

21      A.   Correct.

22      Q.   On Page 167 the government had showed you a text message.

23               MR. CAVER:  I'm asking the government if it would be so  
24      kind to republish Page 167.

25

**Voyles - Cross**

1       **BY MR. CAVER:**

2       **Q.   Do you have that in front of you?**

3       **A.   Yes, I do.**

4       **Q.   On Page 167, middle of the page, can you read the text**  
5       **message that appears to be a received text message from**  
6       **July 5th, 3:20 a.m.?**

7       **A.   The one with the contents, "Sweet were pickin some people**  
8       **and then gettin our car and come down there real quick. "**

9       **Q.   And that says our car?**

10      **A.   It says our car.**

11      **Q.   Not my car?**

12      **A.   No, it says our car.**

13      **Q.   Okay.**

14               **MR. CAVER:   Judge, if I may have a moment.**

15               **(Brief pause.)**

16      **BY MR. CAVER:**

17      **Q.   Just a couple more quick questions about the fingerprints.**  
18      **When you look at a surface like this cell phone, is it possible**  
19      **to see with the naked eye whether there are any fingerprints on**  
20      **the surface if one is looking for that?**

21      **A.   Yes.**

22      **Q.   Okay.   And when you recovered the phone, in what state did**  
23      **you receive the telephone?**

24      **A.   It was in a sealed package.**

25      **Q.   And when you removed the phone from that sealed package,**

**Voyles - Cross**

1       **what was first thing you did with the cell phone?**

2       **A.   Removed the back battery cover.**

3       **Q.   Okay. Did you at any point look at the front glass when the**  
4       **phone -- well, I'm sorry. Was the phone powered on at the time**  
5       **you received it or powered off?**

6       **A.   It was powered off.**

7       **Q.   And when it's powered off, was the screen black?**

8       **A.   Yes.**

9       **Q.   Okay. And does that make it easier to see if there are**  
10       **fingerprints on the glass than if the screen is somehow**  
11       **illuminated?**

12       **A.   It could, yes.**

13       **Q.   And when you took it out of the packaging, you didn't notice**  
14       **any fingerprints on it; is that correct?**

15       **A.   No, I did not.**

16       **Q.   Okay. Thank you.**

17       **(Brief pause.)**

18               **MR. CAVER: Just briefly, Judge. One more question.**

19               **THE COURT: Sure. Ask all you want.**

20               **MR. CAVER: Thank you.**

21       **BY MR. CAVER:**

22       **Q.   Detective, in your testing of the phone, did you ever have**  
23       **an opportunity to look through, for instance, the settings page?**  
24       **Some cell phones have a settings page where it lists the IP**  
25       **address or the owner, anything of that nature?**

**Voyles - Cross**

1       **A. I did look at the settings in the phone, yes.**

2       **Q. And did it show any name or any registered owner?**

3       **A. No.**

4       **Q. Okay. And the only identity that you're aware of that the**  
5       **cell phone was associated with was that Cricket was the provider**  
6       **and Sanyo was the producer?**

7       **A. I'm sorry. As far as --**

8       **Q. The only identities associated with the phone were that it**  
9       **was a Cricket service provider phone, meaning that it used the**  
10       **Cricket service?**

11       **A. It was identified that way, as well as the manufacturer, but**  
12       **also the mobile identifier number and the ID number associated**  
13       **with the phone.**

14       **Q. Right. Okay. But that MEID was never associated with a**  
15       **particular individual owning that ID, correct?**

16       **A. Not on my part, no.**

17       **Q. Okay. Thank you.**

18               **MR. CAVER: Nothing further.**

19               **MR. PEDERSEN: Nothing further.**

20               **THE COURT: You may step down.**

21               **(Witness excused.)**

22               **THE COURT: Next witness.**

23               **MR. PEDERSEN: Your Honor, we call Tracy Runyard.**

24               **(Brief pause.)**

25               **THE COURT: Raise your right hand.**

**Runyard - Direct**

1           **(Witness duly sworn.)**

2                   **TRACY RUNYARD, GOVERNMENT'S WITNESS, SWORN**

3                   **DIRECT EXAMINATION**

4           **BY MR. PEDERSEN:**

5           **Q. Good morning, ma'am. Could you state your name and spell**  
6           **your last name, please?**

7           **A. Tracy Runyard. It's R-u-n-y-a-r-d.**

8           **Q. How are you currently employed?**

9           **A. Excuse me?**

10          **Q. Where do you work?**

11          **A. The jail. The University of Illinois.**

12          **Q. Are you assigned to a specific location where you perform**  
13          **your duties?**

14          **A. The jail, yes.**

15          **Q. Okay. The Winnebago County Jail?**

16          **A. Um-hm**

17          **Q. Is that a yes?**

18          **A. Yes.**

19          **Q. Sorry. She has to type everything that you say down. So,**  
20          **she can't type if you don't respond yes or no.**

21          **A. Okay.**

22          **Q. And how long have you had that job?**

23          **A. Six years.**

24          **Q. And what do you do as a nurse at the Winnebago County Jail?**

25          **A. I primarily do the intake window.**

**Runyard - Direct**

**1 Q. What does that involve?**

**2 A. Just book people and make sure that they're stable enough to**  
**3 be in the facility.**

**4 Q. And is there a certain procedure that you follow with each**  
**5 inmate as they're brought in to intake them into the jail?**

**6 A. There's a form that we fill out.**

**7 Q. So, the procedure involves filling out a form Is that**  
**8 called a -- do you know what that form is called?**

**9 A. Medical intake form**

**10 Q. And are you the one that prepares it, if you're the one that**  
**11 is conducting the intake?**

**12 A. Yes.**

**13 Q. And is that form kept by the jail then?**

**14 A. Yes.**

**15 Q. And the information that you put in the form is it**  
**16 important that you get accurate information?**

**17 A. Yes.**

**18 Q. Why is that?**

**19 A. So that we can make sure that they're stable enough that**  
**20 there's nothing wrong with them that we can't handle at the**  
**21 jail.**

**22 Q. Okay. And then once the form is completed, is it retained**  
**23 at the jail for future reference?**

**24 A. Yes.**

**25 Q. And do you have access to the forms then if you need them?**

**Runyard - Direct**

1       A.    Yes.

2       Q.    Were you working in your capacity as a nurse at the  
3       Winnebago County Jail on July 6th of 2011?

4       A.    Yes.

5       Q.    Do you recall conducting an intake of an individual by the  
6       name of Dayton Poke?

7       A.    Yes.

8       Q.    And was that around 11:00 p.m that evening?

9       A.    Yes.

10      Q.    Do you see that individual in the courtroom today?

11      A.    Yes.

12      Q.    Could you point to him and identify him just by an article  
13      of clothing that he's wearing?

14      A.    A green shirt or a beige shirt.

15               MR. PEDERSEN: Your Honor, I'd ask that the record  
16      reflect identification of the defendant, Dayton Poke.

17               THE COURT: Where is he sitting?

18               THE WITNESS: Right there (indicating).

19               THE COURT: I can't see where you're pointing. At the  
20      table?

21               THE WITNESS: Yeah, sorry.

22               THE COURT: There are six people sitting over there.

23               THE WITNESS: Oh, sorry. At the table right there  
24      (indicating).

25               THE COURT: All right. The court acknowledges the

**Runyard - Direct**

1       **in-court identification.**

2                   **MR. PEDERSEN: Thank you, your Honor.**

3       **BY MR. PEDERSEN:**

4       **Q. And when you met with Dayton Poke on July 6th of 2011, did**  
5       **you interview him and simultaneously prepare a medical intake**  
6       **form?**

7       **A. Yes.**

8       **Q. And did you follow the same procedure that you just**  
9       **described?**

10      **A. Yes.**

11      **Q. I'm going to show you what's been marked as Government's**  
12      **Exhibit 20. Do you recognize Government's Exhibit 20?**

13      **A. Yes.**

14      **Q. Is that the form that you prepared or a copy of the form**  
15      **that you prepared when Dayton Poke was brought in on July 6th of**  
16      **2011?**

17      **A. Yes.**

18      **Q. And does it contain accurate information as you received it**  
19      **from Dayton Poke?**

20      **A. Yes.**

21      **Q. Did you accurately record the information that you received**  
22      **from Dayton Poke?**

23      **A. Yes.**

24      **Q. Okay.**

25                   **MR. PEDERSEN: I would move to admit Government's**

**Runyard - Direct**

**1 Exhibit 20, your Honor.**

**2 THE COURT: Any objection to 20?**

**3 MR. CAVER: No, Judge.**

**4 THE COURT: It will be admitted.**

**5 (Government's Exhibit 20 was offered and received in**  
**6 evidence.)**

**7 BY MR. PEDERSEN:**

**8 Q. I want to show you the first page of the form of**  
**9 Government's Exhibit 20. It consists of several numbered**  
**10 questions; is that right?**

**11 A. Yes.**

**12 Q. Okay. I want to call your attention to question 13.**

**13 A. Okay.**

**14 Q. What is that question?**

**15 A. Medications that he currently uses.**

**16 Q. Okay. And is there a list of medications in the report?**

**17 A. Yes.**

**18 Q. And what does it say?**

**19 A. Gabapentin and Norco.**

**20 Q. What are those two types of medication for?**

**21 A. Pain medications and for neuropathy.**

**22 Q. I'm sorry?**

**23 A. For pain medications and nerve function.**

**24 Q. Okay. Which one is for which?**

**25 A. The Norco is for pain. The gabapentin is mainly for nerve**

**Runyard - Direct**

1        **function. It can be used for pain, as well.**

2        **Q. And then I want to ask you about question 16.**

3        **A. Yes.**

4        **Q. Okay. That indicates, "Can someone bring in your**  
5        **medication," correct?**

6        **A. Um hm**

7        **Q. And the answer is yes?**

8        **A. Yes.**

9        **Q. And then in the explanation it says -- what does it say**  
10       **where it says explain?**

11       **A. Has inhaler with.**

12       **Q. Okay.**

13       **A. Meaning he had his inhaler with him**

14       **Q. Okay. There's a back where it says, "Has inhaler," and**  
15       **there's a backwards J, it almost looks like?**

16       **A. It's a C with a line over it. That means with.**

17                **THE COURT: It means what?**

18                **THE WITNESS: It means with. It's a C with a line over**  
19       **it.**

20       **BY MR. PEDERSEN:**

21       **Q. That's shorthand?**

22       **A. Right.**

23       **Q. And do you recall seeing the inhaler?**

24       **A. Yes.**

25       **Q. Did you receive it from anyone?**

**Runyard - Direct**

**1       A.    Yes.**

**2       Q.    Who did you receive the inhaler from?**

**3       A.    The officer.**

**4       Q.    When the defendant was brought in?**

**5       A.    Yes.**

**6       Q.    All right.  Now, I want to call your attention to the next  
7       page, question 29.  That question says, "Do you use drugs;" is  
8       that right?**

**9       A.    Yes.**

**10      Q.    And what was the answer?**

**11      A.    "No. "**

**12      Q.    Do you recall specifically whether or not you asked the  
13      defendant that question?**

**14      A.    Yes, I did.**

**15      Q.    And do you remember him answering no?**

**16      A.    Yes.**

**17      Q.    And you indicated earlier that he told you that he was  
18      taking prescribed medication.  One of them was what you called  
19      Norco, and that was for pain?**

**20      A.    Yes.**

**21      Q.    And are you aware of any reactions or interactions there  
22      could be for an individual who was taking Norco and then used  
23      cocaine?**

**24      A.    Yes.**

**25      Q.    And what are those?**

**Runyard - Direct**

1     **A. It's bad for the heart. It can lead to heart issues, heart**  
2     **attack.**

3     **Q. And how severe could the interaction be?**

4             **MR. CAVER: I'm going to objection to the relevance.**

5             **THE COURT: I think it has to do with whether his**  
6     **statement -- whether the defendant's statement that he doesn't**  
7     **take cocaine is true or not.**

8             **MR. CAVER: Well, I believe that there was some**  
9     **establishment that Mr. Poke knew that -- may we have a sidebar?**

10            **THE COURT: Sure.**

11            **(The following proceedings were had at the sidebar, out of**  
12     **the presence and hearing of the jury:)**

13            **MR. CAVER: I'm sorry. I should have asked for the**  
14     **sidebar before I went into my objection. I don't think there's**  
15     **been any establishment that Mr. Poke knew of this**  
16     **contraindication. So, I understand what the government's trying**  
17     **to prove, the veracity of the statement that Mr. Poke answered**  
18     **no when he was asked do you use drugs, but there's been no -- we**  
19     **haven't established that Mr. Poke would have known about this**  
20     **contraindication.**

21            **THE COURT: He was prescribed the medication. In the**  
22     **instructions to the medication, I think the jury could**  
23     **reasonably infer that there was some discussion of**  
24     **contraindication, and I think the jury could reasonably infer**  
25     **from the evidence that they have that the defendant knew that**

**Runyard - Direct**

1       the use of Norco was contraindicated with the use of cocaine.

2               **MR. CAVER:** But we haven't established that that was  
3 included in any warnings that Mr. Poke was given about this  
4 medication.

5               **THE COURT:** It's not established completely, but I  
6 think it's a reasonable inference that the jury can draw.

7               **MR. CAVER:** Is the government seeking to have her  
8 testify as an expert with these issues? Because we'll stipulate  
9 that she's an expert, but I think she should be qualified as an  
10 expert if she's going to be testifying as to issues that go  
11 beyond her individual treatment of this patient.

12              **MR. PEDERSEN:** I mean, if you want me to go through her  
13 qualifications, I can. She said she's been a nurse there for  
14 six years.

15              **MR. CAVER:** All I'm saying is we'll stipulate if you  
16 want to make her an expert and if you want her to testify about  
17 medications generally and their contraindications, but I think  
18 that's a necessary step.

19              **MR. PEDERSEN:** Okay.

20              **THE COURT:** All right.

21              (The following proceedings were had in open court, in the  
22 presence and hearing of the jury:)

23       **BY MR. PEDERSEN:**

24       **Q.** Okay. I just want to ask you a few questions about your  
25 education and experience.

**Runyard - Direct**

1       **A.    Okay.**

2       **Q.    You have a nursing degree?**

3       **A.    Yes.**

4       **Q.    And where did you obtain that?**

5       **A.    Rock Valley College.**

6       **Q.    And how long did you study to obtain your nursing degree?**

7       **A.    Two years.**

8       **Q.    And how long have you been employed as a nurse?**

9       **A.    Eleven years.**

10       **Q.   As part of your training and experience as a nurse, are you**  
11       **trained in certain interactions between medications and what**  
12       **would be called as contraindications, indicating if you're**  
13       **taking one medication, you shouldn't take a second medication?**

14       **A.    Yes.   And if we're ever unsure, there's a book that we have**  
15       **that provides all those interactions, as well.**

16               **MR. PEDERSEN:   Your Honor, I would tender the witness**  
17       **as an expert in the contraindications of medications, I guess,**  
18       **for that limited purpose.**

19               **THE COURT:   Do you wish to voir dire the witness?**

20               **MR. CAVER:   We do not, and we would so stipulate,**  
21       **Judge.**

22               **THE COURT:   Thank you.**

23       **BY MR. PEDERSEN:**

24       **Q.    So, I was asking you some questions about the interaction**  
25       **between Norco and cocaine.   Is that a type of interaction that**

**Runyard - Direct**

1     **you in your training and experience are knowledgeable about?**

2     **A. Yes.**

3     **Q. And specifically regarding Norco, if someone that was taking**  
4     **Norco used cocaine, you said there could be a type of**  
5     **interaction involving heart problems?**

6     **A. Correct.**

7     **Q. And what type of heart problems could be caused by that**  
8     **interaction?**

9     **A. It can lead to a heart attack. The cocaine speeds up the**  
10    **heart, the Norco slows down the heart, and on too quick of a**  
11    **change could lead to a heart attack.**

12    **Q. And during your interview of the defendant, did he indicate**  
13    **any complaints of heart problems?**

14    **A. No.**

15           **MR. PEDERSEN: If I could just have a moment.**

16           **(Brief pause.)**

17           **MR. PEDERSEN: I have no further questions.**

18                   **CROSS EXAMINATION**

19    **BY MR. CAVER:**

20    **Q. Nurse Runyard, I'm looking at the -- do you have the intake**  
21    **form in front of you?**

22    **A. No, I don't.**

23    **Q. I'm going to hand you what's been previously marked as**  
24    **Government's Exhibit Number 20. It's the same intake form And**  
25    **I'm going to ask you to turn to Page 2 and Number 24. Can you**

**Rumyard - Cross**

1 read that question?

2 A. Do you have any pain complaints, current illness/injury, or  
3 dental problems.

4 Q. Okay. And at the time that you completed this form  
5 Mr. Poke was prescribed Norco?

6 A. Correct.

7 Q. For pain?

8 A. Um hm

9 Q. But he reported to you that he wasn't having any pain.

10 A. No current pain, correct.

11 Q. Okay. Did he tell you that he was taking his Norco?

12 A. Yes.

13 Q. Okay. And do you know whether Mr. Poke knew of this  
14 contraindication between Norco and cocaine?

15 A. That I do not.

16 Q. Okay. So, you have no reason to believe sitting here today  
17 that Mr. Poke even knew about the contraindication?

18 A. No.

19 Q. Okay. And, in fact, under Number 29, the question that you  
20 asked Mr. Poke is "Do you use drugs;" is that right?

21 A. Correct.

22 Q. And he had been taking his Norco; is that correct?

23 A. Yes. That's what he told me, yeah.

24 Q. That is what he reported?

25 A. Yes.

**Rumyard - Cross**

1     **Q.   Okay.   And under those medications, Norco -- and is it**  
2     **gabapentin?**

3     **A.   Correct.**

4     **Q.   Is that right?**

5     **A.   Yes.**

6     **Q.   Tell me about that.**

7     **A.   Gabapentin?**

8     **Q.   Yes.**

9     **A.   It's used for neuropathy or pain related to.**

10    **Q.   Okay.   Does Norco make you -- does it affect your perception**  
11    **at all?**

12    **A.   It can, yes.**

13    **Q.   And does gabapentin do the same thing?**

14    **A.   No.**

15    **Q.   No.   Okay.   But the Norco does.**

16           **And when you asked Mr. Poke if he used drugs, he told**  
17    **you no, and you have an independent recollection of that; is**  
18    **that correct?**

19    **A.   Yes.**

20    **Q.   And he was taking his Norco at the time?**

21    **A.   Correct.   We ask for anything other than prescription drugs.**

22    **Q.   Okay.   Well, so your previous testimony when the government**  
23    **was asking the question that you asked him the question, "Do you**  
24    **use drugs," and his answer was "No," that's not really the**  
25    **question you asked him?**

**Rumyard - Cross**

1       A. We ask do you use drugs. They say -- I mean, if they say  
2       no, we don't consider their prescription medication drugs.

3       Q. Okay. So, what was the -- if you have an independent  
4       recollection of asking the question and him providing the  
5       answer, what was the exact question you asked him?

6       A. Do you use any drugs.

7       Q. Okay. And Mr. Poke's neuropathy, is that related to his  
8       arm?

9       A. Right.

10      Q. And on Page 1 of Government's Exhibit Number 20, line four,  
11      can you just read that question for me, please?

12      A. Which number? I'm sorry.

13      Q. I'm sorry. Four.

14      A. Any visible body deformities or other physical  
15      abnormalities.

16      Q. And when you examined him did you observe multiple scars?

17      A. Yes.

18      Q. Okay. And do you have an independent recollection of  
19      Mr. Poke and seeing those scars?

20      A. Yes.

21      Q. And did you have a conversation at all about his neuropathy  
22      as it was related to the injuries to his arm?

23      A. Can you repeat the question?

24      Q. Sorry. It was inartfully phrased.

25                    You have an independent recollection of seeing

**Rumyard - Cross**

**1 Mr. Poke's injuries; is that correct?**

**2 A. Yes.**

**3 Q. Did you have a discussion with him at all about the limited**  
**4 use of his right arm?**

**5 A. What he told me.**

**6 Q. And what was that?**

**7 A. Just that he had limited use of his arm**

**8 Q. Okay. And based on your background and training and**  
**9 experience and qualifications as an expert, do you have any**  
**10 knowledge of the injuries of Mr. Poke other than what you**  
**11 observed?**

**12 A. Can you rephrase a little?**

**13 Q. Other than the injuries that you observed, do you have any**  
**14 other knowledge of the nature or extent of Mr. Poke's injuries?**

**15 A. Relating to his previous? I mean, relating to the shooting?**

**16 Q. Relating to his arm**

**17 A. Okay. Yes.**

**18 Q. Okay. And does that restrict Mr. Poke's movement in any way**  
**19 that you know of?**

**20 A. At the time, yes.**

**21 Q. Okay. And did it measurably restrict his movement?**

**22 A. Yes.**

**23 Q. And was it -- to what extent, if you know, did it restrict**  
**24 his movement of that arm?**

**25 A. That I don't remember.**

**Rumyard - Cross**

1       **Q. But it was significant?**

2       **A. Um hm**

3       **Q. And the gabapentin does relieve pain associated with the**  
4       **neuropathy; is that correct?**

5       **A. Yes.**

6       **Q. And based on the nature of Mr. Poke's injuries to his right**  
7       **arm and the associated injuries, isn't it the case that you**  
8       **believe that Mr. Poke is in pain pretty much constantly?**

9       **A. I'm not able to say if he's in pain constantly or not.**

10      **Q. When you filled out the form contained in Government's**  
11      **Exhibit Number 20 and you were conducting your intake of**  
12      **Mr. Poke, did he report to you that he was taking his medication**  
13      **regularly?**

14      **A. Yes.**

15      **Q. Okay. And if a person has pain associated with the**  
16      **neuropathy of the sort that Mr. Poke suffers from if they stop**  
17      **taking their medication, is it common that they would then**  
18      **experience pain?**

19      **A. Yes.**

20      **Q. And so, unless he was taking those drugs constantly, there's**  
21      **a good chance that he would have been in pain?**

22               **MR. PEDERSEN: Your Honor, calls for speculation.**

23               **THE COURT: No, she's testifying as an expert.**

24               **BY THE WITNESS:**

25      **A. I mean, I can't say what pain he has and what triggers his**

**Rumyard - Cross**

**1 pain, when his pain comes and goes. I mean --**

**2 BY MR. CAVER:**

**3 Q. Okay. But he suffers from neuropathy associated with the**  
**4 injuries to his right arm, is that fair?**

**5 A. Correct.**

**6 Q. Okay. What is neuropathy?**

**7 A. It is the nerves causing pain due to an injury in that area.**

**8 Q. And is it because those nerves are constantly firing pain**  
**9 signals to the brain?**

**10 A. Yes. Or there's been an interruption in the nerve pathway,**  
**11 yes.**

**12 Q. Okay. And gabapentin is one of the drugs that blocks those**  
**13 signals from being sent to the brain?**

**14 A. Yes.**

**15 Q. So, if Mr. Poke does not take that medication, there's**  
**16 nothing to block those signals from reaching the brain?**

**17 A. Yes.**

**18 Q. And, therefore, that would be what you and I would call a**  
**19 sensation that would be what we call pain?**

**20 A. Yes.**

**21 Q. Okay.**

**22 A. But it can be triggered by certain things, too, by use of or**  
**23 other factors.**

**24 Q. And what do you mean by that?**

**25 A. Like how much they use that area, all the things like that**

**Runyard - Cross**

1       that would trigger pain.

2       Q.    Okay.

3               MR. CAVER:   Judge, thank you.

4                               **REDIRECT EXAMINATION**

5       BY MR. PEDERSEN:

6       Q.    In your experience, when someone is prescribed a drug such  
7       as Norco, is it the common practice in your field to explain to  
8       that individual what other types of drugs that they should avoid  
9       taking?

10      A.    No.

11      Q.    It's not?

12      A.    Unh-unh.

13      Q.    They wouldn't receive contraindications with the medication?

14      A.    They would receive that from the doctor who prescribed the  
15      medications.

16      Q.    Okay.

17      A.    Because we don't prescribe the medications.

18      Q.    Right.  So, when he got the prescription for the Norco, the  
19      doctor or someone or the pharmacist would have explained to  
20      him --

21               MR. CAVER:   I'm going to object to Nurse Runyard's  
22      knowledge of whether or not Mr. Poke received --

23               THE COURT:   She's saying what doctors do.  She's  
24      testifying as an expert.  I think it's admissible.

25

**Runyard - Redirect**

**1 BY MR. PEDERSEN:**

**2 Q. Could you -- let me ask you the question again.**

**3 Would it be the common practice for the doctor**  
**4 prescribing the medication to explain to the patient to whom the**  
**5 medication is prescribed what other types of drugs they should**  
**6 avoid taking while taking that medication?**

**7 A. Yes.**

**8 Q. I want to ask you another question about the form that you**  
**9 helped prepare on Page 2, question 24. That was the question**  
**10 where you asked, "Do you have any pain complaints, current**  
**11 illness/injury, or dental problems?"**

**12 A. Yes.**

**13 Q. And the defendant answered no, correct?**

**14 A. Yes.**

**15 Q. And then regarding the question for prescriptions, both**  
**16 these pages, they have inquiries -- or I'm sorry. Starting on**  
**17 Page 1, question nine, right above that it says inquiry. Is**  
**18 that -- those questions, are they in the form that you ask the**  
**19 individuals as you're preparing the intake form?**

**20 A. Yes.**

**21 Q. I mean, do you basically repeat what's written there?**

**22 A. Yes.**

**23 Q. So, you go through those questions in order, correct?**

**24 A. Yes.**

**25 Q. The first question that you asked regarding medications was**

**Runyard - Redirect**

1       question 13, correct?

2       A.   Yes.

3       Q.   So, that question was, "Are you currently prescribed any  
4       medications;" is that correct?

5       A.   Yes.

6       Q.   All right. Then you go further you ask about if he's  
7       taking -- on 19 do you take any -- well, first you ask, "Are you  
8       currently under care for mental illness," and then you ask, "Do  
9       you take your psychotropic medication," and the answer to that  
10      was no, correct?

11      A.   Yes.

12      Q.   So, after you've asked those questions regarding medication,  
13      later in question 29, right before you ask if the defendant in  
14      question 27, "Do you drink alcohol," the answer is no, correct?

15      A.   Yes.

16      Q.   Then question 29 is "Do you use drugs?"

17      A.   Yes.

18      Q.   And you've already previously questioned the defendant at  
19      that point about his prescription medication?

20      A.   Yes.

21      Q.   Okay.

22               MR. PEDERSEN: If I could just have a moment.

23               (Brief pause.)

24               MR. PEDERSEN: That's all the questions I have. Thank  
25      you.

**Runyard - Recross**

**1 MR. CAVER: Briefly.**

**2 RECROSS EXAMINATION**

**3 BY MR. CAVER:**

**4 Q. In reference to question number 24 and back to the**  
**5 medication, does the gabapentin and the Norco completely halt**  
**6 pain within the patient, if you know?**

**7 A. That's not for me to -- I mean, I'm not sure if they would**  
**8 have any pain outside of that. It's up to the patient.**

**9 Q. Do they kill the pain, or do they relieve it?**

**10 A. That's what they're designed to do, yes.**

**11 Q. I'm sorry?**

**12 A. That's what they're designed to do, yes.**

**13 Q. They're designed to kill the pain?**

**14 A. Yes.**

**15 Q. And so, a patient typically taking gabapentin with the**  
**16 injuries such as Mr. Poke wouldn't feel any pain whatsoever?**

**17 A. I can't say that.**

**18 Q. Do you in your background, training, and experience working**  
**19 at the jail, have you ever had patients under the influence of**  
**20 medication who later give a different answer to the same**  
**21 question asked of them earlier?**

**22 A. Yes.**

**23 Q. Okay. Thank you.**

**24 MR. PEDERSEN: Nothing further.**

**25 THE COURT: Thank you for your help.**

**Reffett - Direct**

**1 THE WITNESS: Yes.**

**2 (Witness excused.)**

**3 THE COURT: Next witness.**

**4 MR. KARNER: Call Detective Bob Reffett.**

**5 (Brief pause.)**

**6 (Witness duly sworn.)**

**7 ROBERT REFFETT, GOVERNMENT'S WITNESS, SWORN**

**8 DIRECT EXAMINATION**

**9 BY MR. KARNER:**

**10 Q. Sir, would you tell us your name and spell your last name?**

**11 A. It's Robert Reffett, R-e-f-f-e-t-t.**

**12 Q. How are you employed?**

**13 A. The City of Rockford Police Department.**

**14 Q. How many years have you spent as a police officer?**

**15 A. Just over 23 years.**

**16 Q. What is your current job assignment?**

**17 A. I'm a detective assigned to the Rockford narcotics unit.**

**18 Q. How long have you been assigned to the narcotics unit?**

**19 A. Almost eight years.**

**20 Q. What are your duties as a detective in a narcotics unit?**

**21 A. We handle primarily all narcotics investigations, ranging**  
**22 anywhere from street level sales to larger investigations, wire**  
**23 cases, overhears, cases like that.**

**24 Q. What kind of training have you received as a narcotics**  
**25 detective?**

**Reffett - Direct**

1     **A. Started back when I became a police officer going to the**  
2     **Police Training Institute back in 1990, and then during the**  
3     **course of my employment, I've attended several drug-related**  
4     **classes, some of which are concealment areas within a vehicle,**  
5     **criminal drug patrol, clandestine lab awareness, street crimes**  
6     **and seminars, electronic countersurveillance or electronic**  
7     **surveillance, indoor cannabis cultivation, undercover officer**  
8     **training. And there's been others, miscellaneous classes.**

9     **Q. Are one of the investigative techniques you use as a**  
10    **narcotics detective to execute search warrants?**

11    **A. Yes.**

12    **Q. Describe what it means to execute a search warrant.**

13    **A. Search warrants are generally -- the majority of our search**  
14    **warrants are done at residences where we've made a controlled**  
15    **purchase of narcotics or cannabis, and we apply for a search**  
16    **warrant, which gives us the authority to enter the house and**  
17    **search for other illegal items.**

18    **Q. Commonly known as a drug raid?**

19    **A. Yes.**

20    **Q. Now, you just mentioned another term, controlled purchase.**  
21    **What's a controlled purchase?**

22    **A. A controlled purchase is where we either use an informant or**  
23    **an undercover officer, and it's basically we control the**  
24    **purchase of the narcotics. If it's with an informant, we meet**  
25    **with them, we search them, make sure they don't have any money**

**Reffett - Direct**

1 or drugs on them We supply them with money from our unit from  
2 the police department, and we give them that money to go and  
3 make the purchase of drugs for us. From that point we follow  
4 them to the residence or the location that we're going to  
5 purchase the drugs. We watch them leave us, go directly to the  
6 house, come back. They give us the drugs. Then we apply for  
7 the search warrant.

8 Q. Going back to search warrants, approximately how many search  
9 warrants have you participated in as a detective?

10 A. Probably over 500 search warrants.

11 Q. You mentioned controlled purchases with the use of an  
12 informant. How many times have you participated in making  
13 controlled purchases of illegal drugs with using a confidential  
14 informant?

15 A. Probably well over 500.

16 Q. And have you also made purchases of drugs working  
17 undercover?

18 A. Yes.

19 Q. Approximately how many times?

20 A. Probably between 50 and a hundred.

21 Q. During the course of your career, have you interviewed drug  
22 users who serve as informants so that you can gather  
23 intelligence about how drug traffickers, particularly in  
24 Rockford, conduct their trade?

25 A. Yes.

**Reffett - Direct**

**1 Q. How many times?**

**2 A. Probably spoken to individuals like that probably close to a**  
**3 thousand times.**

**4 Q. Okay. And have you interviewed people who have been charged**  
**5 with and later convicted of possessing with intent to distribute**  
**6 or distributing illegal drugs?**

**7 A. Yes.**

**8 Q. Approximately how many times?**

**9 A. Probably about the same. Probably close to a thousand**  
**10 times.**

**11 Q. Prior to today did you testify as an expert in court on the**  
**12 methods and the tools used by specifically crack cocaine dealers**  
**13 to distribute crack cocaine?**

**14 A. Yes.**

**15 Q. Approximately how many times?**

**16 A. I've testified in federal court probably five or six times**  
**17 and then in state court probably 16 to 18 times as an expert**  
**18 witness.**

**19 MR. KARNER: Your Honor, I tender Detective Reffett as**  
**20 an expert in the area of narcotics trafficking.**

**21 THE COURT: Do you wish to voir dire the witness?**

**22 MR. CAVER: No, Judge, and we have no objection.**

**23 THE COURT: He may testify as an expert.**

**24 BY MR. KARNER:**

**25 Q. Now, prior to today have you become familiar with a man**

**Reffett - Direct**

**1        named Dayton Poke?**

**2        A.    Yes.**

**3        Q.    Are you aware of his nickname?**

**4        A.    Yes.**

**5        Q.    What is it?**

**6        A.    Daylow.**

**7        Q.    Now, as far as the events on July 6th, 2011, though, you had**  
**8        no participation in those events, did you?**

**9        A.    That's correct.**

**10       Q.    Now, let's talk about the physical characteristics of crack**  
**11       cocaine. Are you aware of what it looks like and how it's made?**

**12       A.    Yes.**

**13       Q.    Would you describe that for the jury, please?**

**14       A.    Crack cocaine is a form of cocaine. Typically how we find**  
**15       it, it's bagged up in like clear plastic sandwich baggie**  
**16       corners, and the substance itself is typically an off-white**  
**17       color. It's kind of like a hard, chunky substance, almost**  
**18       similar to like a soap or a wax. It's kind of sometimes made of**  
**19       that consistency. Usually when it breaks apart, it breaks into**  
**20       smaller little chunks.**

**21       Q.    Okay. And are you aware of or familiar with the quantity of**  
**22       drugs that are cocaine base, crack cocaine, that are sold on the**  
**23       street level?**

**24       A.    The quantity? I'm sorry.**

**25       Q.    Yes.**

**Reffett - Direct**

1     **A. Typically we find that the crack cocaine that is purchased**  
2     **in \$20 bags. It breaks down to approximately two-tenths of a**  
3     **gram**

4     **Q. Is the price -- well, what is the price that goes with a**  
5     **20th of a gram?**

6     **A. A 20th of a gram will go for \$20.**

7     **Q. And what is the price typically in Rockford, certainly**  
8     **within the past five years, for a tenth of a gram?**

9     **A. \$10.**

10    **Q. Are there other quantities that are available for street**  
11    **purchase?**

12    **A. Typically what we see are the ten and \$20 bags. Sometimes**  
13    **there will be a little bit bigger bags. The most profit is made**  
14    **from the smaller bags, but the larger that you make the bags, it**  
15    **sometimes can be a little bit safer for the drug dealers. We**  
16    **have found \$50 bags. That's not as popular, but we do come**  
17    **across that occasionally.**

18    **Q. And how are the various quantities packaged typically?**

19    **A. Well, typically the quantities, we see them packaged in the**  
20    **clear sandwich plastic baggies. It's tucked down into the**  
21    **corner. The bag is twisted and then tied into a knot, and then**  
22    **the excess is either torn or cut off.**

23    **Q. I'm going to show you several items here. First of all,**  
24    **that middle item, Government's Exhibit 7 in front of you, would**  
25    **you look at that, please, and tell us what you believe that to**

**Reffett - Direct**

1       be based on your training and experience from its appearance?

2       A.   It appears to be crack cocaine.

3       Q.   In multiple packets?

4       A.   Yes.

5       Q.   Now, the way that that is packaged and broken down into  
6       separate units, is that consistent or inconsistent with what a  
7       street level dealer would possess?

8       A.   No, it's consistent.   The bags are a little bit larger than  
9       a \$20 bag, but it's consistent to what we see.

10      Q.   Okay.   Now, are you familiar with the role firearms play in  
11      the street level distribution of cocaine base or crack cocaine?

12               THE COURT:   I didn't get that last question.   You said  
13      is it consistent with a distributor or a user, and he says it's  
14      consistent.   I think that's what I got.

15               MR. KARNER:   Well, can I ask the witness just to  
16      clarify, Judge?

17               THE COURT:   Maybe we ought to ask the court reporter to  
18      read it back just to make sure I'm right.

19               MR. KARNER:   Yes, sir.

20               THE COURT:   Mary, could you please read the question  
21      that preceded the answer it's consistent?

22               (The record was read by the reporter as requested.)

23               THE COURT:   I was wrong.   Please proceed.

24      BY MR. KARNER:

25      Q.   Well, just so we're clear on that, if you found a person in

**Reffett - Direct**

1      possession of that, based on the way it's packaged and the  
2      volume, is that consistent or inconsistent with an intent to  
3      distribute?

4      A. It is consistent with an intent to deliver, to distribute.

5      Q. Okay. Now, in your experience are you familiar with the  
6      function of firearms in connection with street level  
7      distributors or dealers of crack cocaine?

8      A. Yes. Frequently we find drug dealers in possession of  
9      firearms.

10     Q. Well, why? What role do they serve?

11     A. Basically for their safety, to protect their money, their  
12     drugs, and to protect them sometimes from either the users or  
13     from other drug dealers.

14     Q. Because they can't report thefts or robberies to police,  
15     right?

16     A. That's correct.

17                    MR. CAVER: Objection. Leading.

18                    THE COURT: Sustained.

19                    MR. KARNER: Okay.

20     BY MR. KARNER:

21     Q. Well, is it a safe or a sensible practice for a drug  
22     trafficker to report robberies or thefts to the police?

23     A. No, we don't typically see that.

24     Q. Why?

25     A. Because they're dealing in illegal substances, and to report

**Reffett - Direct**

1     that they've been robbed of their illegal substances, that's  
2     kind of like -- they don't typically do that.

3     **Q. Drug trafficking, specifically distribution of cocaine base.**  
4     **Lucrative or not?**

5     **A. It can be very lucrative.**

6     **Q. Is it common or uncommon in your experience to find those**  
7     **who distribute cocaine base to be in possession of a lot of**  
8     **money?**

9     **A. Yes.**

10           **MR. CAVER: Objection to what's a lot. Vagueness.**

11           **THE COURT: Okay. Well, that would be something you**  
12     **could clear up on cross examination. I'll overrule the**  
13     **objection.**

14     **BY MR. KARNER:**

15     **Q. And I realize it's not the Trump fortune here, but \$260 in**  
16     **combination with the amount of crack cocaine that's in front of**  
17     **you and a handgun, is that consistent or inconsistent with an**  
18     **intent to distribute?**

19     **A. It's consistent.**

20     **Q. Are you familiar with the role of cell phones to those who**  
21     **distribute crack cocaine?**

22     **A. Yes.**

23     **Q. What's the role of a cell phone?**

24     **A. It's communication. It's communication used between the**  
25     **dealer and the users.**

**Reffett - Direct**

1     **Q. Now, in your role in this case, did you examine some**  
2     **printouts of text messages?**

3     **A. Yes.**

4     **Q. Let me just stop you there. Before we go into the text**  
5     **messages, how is crack cocaine ingested?**

6     **A. It's smoked through a pipe or an object used to become a**  
7     **pipe.**

8     **Q. And in your experience, what types of objects are used as**  
9     **pipes, crack cocaine pipes?**

10    **A. We typically see -- we'll either find the glass tubes and**  
11    **like the copper mesh inside them. They're just, you know,**  
12    **probably three, four inches long, but it's just a small --**  
13    **almost like a straw, but it's made out of glass. Other ways**  
14    **that we've seen, we've seen pieces of car antenna, other pieces**  
15    **of small diameter pipe. But probably the most common one we**  
16    **come across are the glass pipes.**

17    **Q. Okay. Now, I want to show you the document I just handed**  
18    **you, Government's Exhibit 21. Have you seen that before?**

19    **A. Yes.**

20    **Q. Were you able to review the text messages that are in**  
21    **Government's Exhibit 21 prior to today?**

22    **A. Yes.**

23    **Q. And in examining those text messages, was it -- in reading**  
24    **those over, was it consistent or inconsistent that the possessor**  
25    **of the phone from which these text messages were taken from had**

**Reffett - Direct**

1 an intent to distribute drugs versus was a simple user?

2 A. The text messages indicated that the person in possession of  
3 that phone was distributing the drugs.

4 MR. CAVER: I'm going to -- never mind. I'll withdraw.

5 BY MR. KARNER:

6 Q. Let's go to Page 205 of that exhibit, if you could. On the  
7 second box from the top, it says, "Low wit the good." Have you  
8 heard -- do you know what the reference to the good means?

9 A. Typically what we've seen is with the good, meaning -- a lot  
10 of times it mean illegal drugs.

11 Q. And good referencing the quality of those drugs?

12 A. Yes.

13 Q. And if we can go to Page 180 in the middle of the page, do  
14 you see where I'm referring to? "What the 3.0 yea."

15 A. Yes.

16 Q. Do you know what 3.0 means there?

17 A. From my experience, what I would interpret that as being as  
18 three grams or which commonly is known -- it can be right in the  
19 weight of what they typically call an eightball.

20 Q. Okay. Now, are you familiar in the business of drug  
21 trafficking with the term fronting or what it means to front  
22 something?

23 A. Yes.

24 Q. What does it mean to front something?

25 A. A lot of times, you know, people that are looking to

**Reffett - Direct**

1 purchase, purchase narcotics, will ask to be fronted, and that's  
2 to be given the drugs ahead of time before the payment, and then  
3 later down the road that person will make the payment.

4 Q. Are you familiar with the term 40?

5 A. Yes.

6 Q. What is a 40?

7 A. Well, a 40 can also be -- is basically a quantity of drugs.  
8 It could be two twenties, or it could be a little bit larger  
9 bag, right around the weight of four-tenths of a gram

10 Q. Now, does the quality, at least from the perception of a  
11 crack cocaine user, does the quality of crack cocaine differ or  
12 vary among street level dealers?

13 A. It can vary.

14 Q. And how is that possible for it to vary? And when mention  
15 is made of the quality of crack cocaine, what's that a reference  
16 to?

17 MR. CAVER: Objection. Relevance.

18 THE COURT: How is it relevant?

19 MR. KARNER: Judge, it's relevant because some of these  
20 text messages refer to some, for lack -- using that term shit  
21 being good, and it puts those comments into context.

22 THE COURT: I'll overrule the objection.

23 THE WITNESS: I'm sorry. Was I to go ahead?

24 THE COURT: Yes.

25

**Reffett - Direct**

1 **BY MR. KARNER:**

2 **Q. What does it mean for the quality of crack cocaine to be**  
3 **good, and what causes crack cocaine to vary in quality?**

4 **A. Crack cocaine will vary in quality a lot of times in the**  
5 **strength. It's the amount of added items in with the cocaine,**  
6 **whether it's a cutting agent or it's the actual making of the**  
7 **crack cocaine. Sometimes you will get a good batch. Sometimes**  
8 **you can get a bad batch, depending on how it's manufactured.**  
9 **Sometimes it won't be a hard, chunky substance. It will almost**  
10 **be like a goo, a gooe, softer substance if it's bad.**

11 **MR. KARNER: May I just have a moment, please?**

12 **(Brief pause.)**

13 **BY MR. KARNER:**

14 **Q. Going back to Government's Exhibit 21, the series of**  
15 **July 5th text messages, and they begin on Page -- actually, 170**  
16 **there's one word. Going from 170 all the way forward to 161,**  
17 **can you explain the meaning of those texts as a group?**

18 **A. All right. Well, basically starting on July 5th at the**  
19 **3:10:05 text message, a cell phone received a text message**  
20 **saying, "I get paid Friday. You front me?" So, basically this**  
21 **person at the 7786 number is asking the possessor of the**  
22 **phone -- basically telling him he gets paid Friday and asking to**  
23 **be fronted probably a quantity of drugs.**

24 **The possessor of the phone then sends a message saying,**  
25 **"Yes I got that's cool." Then the person at the 7786 number**

**Reffett - Direct**

1 sends to the possessor of the phone, "You sure? How much is the  
2 prices?" The person possessing the phone then sends a message  
3 back to the 7786 number, "\$20." Then the 7786 number sends a  
4 message back to the possessor of the phone saying, "Alright you  
5 should do me a 40 though if possible." The possessor of the  
6 phone sends a text back saying, "Ok."

7 Then going up to -- it's a continuation of the text.  
8 Hang on a second. The possessor of the phone asks, "How long?"  
9 Then says, "Sleep." He receives a message back from the 7786  
10 number to the possessor of the phone, "Sweet were pickin some  
11 people then gettin our car and come down there real quick." The  
12 possessor of the phone sends a message back saying, "Ok."

13 The person at the 7786 number sends a message back to  
14 the possessor of the phone, "Like mebbe like a half hour." The  
15 possessor of the phone says a message back saying, "Ok." The  
16 7786 number sends a message to the possessor of the phone, "Like  
17 a half hour ish."

18 THE COURT: Well, he's just reading the text messages.  
19 We can do that.

20 THE WITNESS: Okay.

21 BY THE WITNESS:

22 A. I didn't know if you wanted the text messages or -- you know  
23 what I'm saying? I'm trying to interpret the conversation.

24 BY MR. KARNER:

25 Q. Well, what's the significance of that series of texts?

**Reffett - Direct**

1     **A. Basically, the person at the 7786 number is arranging with**  
2     **the possessor of the phone a narcotics transaction, and he's**  
3     **asking for \$40 worth of crack cocaine.**

4     **Q. On the top of Page 166, in the body box, there's a comment,**  
5     **"Cool. I'll pay you Friday night for sure. And if you have**  
6     **good shit I'll buy more too."**

7     **A. Yes, I see that.**

8     **Q. What's the center of that message saying?**

9     **A. The center of that message? You mean the part of the text?**  
10    **Is that what you're asking me?**

11    **Q. Yes.**

12    **A. That I'll pay you Friday night for sure, and if you have**  
13    **good shit, I'll buy more too.**

14    **Q. Good shit is a reference to what?**

15    **A. The drugs.**

16    **Q. And the quality?**

17    **A. Yes.**

18           **MR. KARNER: Nothing further.**

19           **THE COURT: Mr. Caver.**

20                   **CROSS EXAMINATION**

21    **BY MR. CAVER:**

22    **Q. And you don't know who was sending these text messages or**  
23    **receiving them for that matter, correct?**

24    **A. No. It's just obviously the text messages were found inside**  
25    **the phone.**

**Reffett - Cross**

**1 Q. What else does a 40 refer to?**

**2 A. I'm sorry.**

**3 Q. What else is a 40 commonly referred to?**

**4 A. As far as in --**

**5 Q. 40 ounce beer?**

**6 A. Yeah, I've heard beers referred to as 40s. Yes.**

**7 Q. Pretty common.**

**8 A. I've heard it, yes.**

**9 Q. Okay. And in terms of the distinction between a drug dealer  
10 and a drug trafficker, do drug dealers commonly share phones?**

**11 A. The phone -- sometimes the phones will be passed from dealer  
12 to dealer if they're working together.**

**13 Q. And sometimes they're passed to people that aren't dealers;  
14 is that fair?**

**15 A. That the drug dealer would give his phone to just someone  
16 else?**

**17 Q. That when a phone is being used by multiple people, there's  
18 no way that you know of as an expert witness in drug  
19 transactions to determine whether or not that phone is  
20 accessible to other people?**

**21 A. I guess I wouldn't know that, if someone else has access to  
22 that phone or not.**

**23 Q. Okay. And, in fact, you don't know that because -- well,  
24 typically, is there any way to restrict phone use in cell phones  
25 used by drug dealers?**

**Reffett - Cross**

1       A.   You could have -- I mean, you could have a pass code set up  
2       on your phone so that nobody could --

3       Q.   Is that common?

4       A.   In a lot of narcotics cases we come across where we're  
5       arresting drug dealers, a lot of times we come across their  
6       phones, and they're locked.

7       Q.   And do you have any knowledge as to whether or not this  
8       phone that you took the messages from was locked in any way?

9       A.   I don't know.

10      Q.   And with drug addicts -- in this case do you know how much  
11      crack cocaine was recovered?

12      A.   Yes.

13      Q.   Okay. And the tested amount was, if you recall?

14      A.   From the lab report that returned?

15      Q.   How much of the drugs was tested in this case that's being  
16      used?

17      A.   From what I saw in the reports, the lab report came back  
18      that they tested -- they didn't say how much of the substance  
19      they tested, but they tested up to 1.2 grams.

20      Q.   Okay. And so, that would be six 20 bags?

21      A.   Well, you don't know because a lot of times we find with the  
22      State Crime Lab is they will only test up to to reach the charge  
23      that's being charged.

24      Q.   Maybe I didn't ask the question correctly. Is 1.2 grams the  
25      equivalent in the weight to six 20 bags?

**Reffett - Cross**

1       A.   I'm sorry.   Yes.

2       Q.   That's all I'm asking.

3       A.   Okay.   I'm sorry.

4       Q.   So, is that weight also consistent with a drug addict who  
5       has access to money purchasing more than one 20 bag?

6       A.   I'm sorry.   What was that again?

7       Q.   Would having six 20 bags be consistent with a drug addict's  
8       personal use?

9       A.   Typically when we find crack cocaine users, we typically  
10       find them in possession of anywhere from like one to three bags  
11       at a time.

12       Q.   And if they had access to money, they might have more?

13       A.   It's possible, yes, but typically that's what we find.

14       Q.   For instance, we're not talking about 20 or 30 bags here.  
15       We're talking about the equivalent of the weight of six 20 bags;  
16       is that fair?

17       A.   I'm sorry.   You're talking about the equivalent of six 20  
18       bags?

19       Q.   In terms of the weight, 1.2 grams, we're talking about the  
20       weight equivalent of six 20 bags; is that fair?

21       A.   Yes.

22       Q.   Okay.   So, is it totally out of the realm of possibility  
23       then that six 20 bags, as opposed to one to three, could be  
24       purchased by a user?

25       A.   It's possible, yes, but we don't typically see that.

**Reffett - Cross**

1     **Q.   Okay.  And you said earlier that you see mostly smoking out**  
2     **of glass pipes and that sort of thing.  Do you also know how**  
3     **individual users use crack cocaine occasionally?**

4     **A.   As far as what?  I mean, as the manners in which they ingest**  
5     **it?**

6     **Q.   Yes.**

7     **A.   Like I testified to, either glass pipes, small diameter**  
8     **metal tube, such as an antenna piece, or a small pipe fitting.**  
9     **That's typically what we see.**

10    **Q.   They might add it to other drugs, that sort of thing?**

11    **A.   I've heard of that before, but in the people that I've**  
12    **talked to as far as users, I've never heard a user telling me**  
13    **that they've added it to other things.**

14    **Q.   Okay.  But it's done.  For instance, you've never heard of**  
15    **anybody adding crack cocaine, for instance, to another drug and**  
16    **then using it together?**

17    **A.   As far as what other drug?**

18    **Q.   Marijuana.**

19    **A.   The only times that I've heard that is in cases where**  
20    **someone has been arrested for possession with intent to deliver.**

21    **Q.   And tell me about that.**

22    **A.   Typically, people -- a lot of times we find in my experience**  
23    **as an expert witness and the drug cases that I've handled, I've**  
24    **heard of crack cocaine being added to cigars.  They call them**  
25    **mac joints.  They say that they sprinkle it onto the marijuana**

**Reffett - Cross**

1 cigarette and smoke the crack cocaine that way.

2 In the experience that I've had as 13 years basically  
3 of doing drug work, most of the users -- almost all the users  
4 I've ever talked to, they never bring that up. The only people  
5 that have ever brought that up to us are people that we have  
6 charged with possession with intent to deliver as a defense.

7 Q. But they're not rolling this joint. They're not rolling it  
8 to sell it. They're rolling it to smoke it, right?

9 A. Yes, that's what they say.

10 Q. So, for personal use?

11 A. That's what the people that we've arrested for possession  
12 and intent have told us.

13 Q. And that's all you really have to go on is what they tell  
14 you, right?

15 A. The people that we've charged with that tell us that.

16 Q. For instance, you don't run into -- as an expert witness and  
17 your background and training and experience, you don't often run  
18 into people selling spliffs of marijuana with crack cocaine in  
19 them for sale, correct?

20 A. No.

21 Q. On Page 205, talking about the Paraben report, the text  
22 messages, okay? At the top there where it says, "Low with the  
23 good," do drug dealers typically refer to themselves in the  
24 third person?

25 A. Actually, yes.

**Reffett - Cross**

1     **Q. Because -- okay. You have seen that?**

2     **A. Yes.**

3     **Q. Okay. So, that's common?**

4     **A. I mean, if you look at the text before that, the person's**  
5     **asking who this is, and the response is "Low with the good."**

6     **Q. Okay. But in this case with these text messages, you**  
7     **can't -- it's not common for an individual to speak of himself**  
8     **in the third-party; is that fair?**

9     **A. I guess that's up to the individual.**

10    **Q. Okay. And in your background, training, and experience in**  
11    **your capacity as an expert witness, do you typically see**  
12    **handguns held by the grip or by the barrel?**

13    **A. I don't understand. What do you mean?**

14    **Q. When drug dealers carry weapons or use them for their**  
15    **protection, as you testified earlier, do they typically hold**  
16    **them by the grip of the firearm or by the barrel, if you know or**  
17    **if you have any experience with it?**

18    **A. I guess you could manipulate the handgun any way you want**  
19    **depending on what you're doing with it. I mean, if you're**  
20    **taking it and -- if you're putting it in your waistband, you**  
21    **would have it by the grip. If you were putting it underneath a**  
22    **seat, you could be grabbing it by the barrel. I mean, it all**  
23    **depends, I mean, what you're doing with it.**

24    **Q. Okay. Your testimony earlier was that drug dealers**  
25    **typically protect themselves with firearms, to have a handgun at**

**Reffett - Cross**

1 the ready. Does it make -- in your background, training, and  
2 experience, do you find it more common that people store the  
3 firearm with the barrel ready to grab or with the grip ready to  
4 grab?

5 A. Are you talking about this case in specific?

6 Q. Just in general.

7 A. Just in general? You can find a handgun in many different  
8 positions when we recover them because when we recover them  
9 they may not be in the same place they were prior to us being  
10 there. You know what I'm saying? A handgun could be put  
11 anywhere once they detect law enforcement in the area of them

12 Q. But a handgun that's being used for protection purposes, is  
13 it fair to say that a handgun being used for those purposes is  
14 best accessible if the grip is readily accessible, as opposed to  
15 the barrel?

16 A. Yeah, that would make sense.

17 Q. Okay.

18 MR. CAVER: May I just have a moment, Judge?

19 (Brief pause.)

20 BY MR. CAVER:

21 Q. You had an opportunity to review all the text messages in  
22 this case; is that correct?

23 A. Yes.

24 Q. And roughly how many phone numbers were involved in those  
25 text messages?

**Reffett - Cross**

1     **A. You know, I'd have to go back through and look at it, the**  
2     **entirety of the text messages that we recovered. Offhand I was**  
3     **looking -- when I was looking at the text messages and**  
4     **deciphering the messages that appeared to be drug-related and**  
5     **going from those phone numbers, I would say there's two or three**  
6     **numbers that were different that appeared to be drug-related.**

7     **Q. Okay. So, two or three phone numbers?**

8     **A. Yes.**

9     **Q. Thank you.**

10           **MR. CAVER: I have nothing further.**

11                   **REDIRECT EXAMINATION**

12     **BY MR. KARNER:**

13     **Q. Are you familiar with any 40-ounce brand of beer out there**  
14     **that costs \$20?**

15     **A. No.**

16     **Q. In this case there's been a stipulation that the contents of**  
17     **one bag was tested and found to be 1.2 grams of cocaine base.**  
18     **If the other seven untested bags had the same -- roughly the**  
19     **same weight and were cocaine base, would that be consistent or**  
20     **inconsistent with an intent to distribute?**

21           **MR. CAVER: Objection to the relevance. The weight of**  
22     **the tested material in the indictment is 1.2 grams.**

23           **MR. KARNER: I'm asking him about the other seven bags,**  
24     **though.**

25           **MR. CAVER: Of what?**

**Reffett - Redirect**

1           **THE COURT:** Are you talking about the other seven bags  
2           **in Government's 7?**

3           **MR. KARNER:** Yes.

4           **THE COURT:** Why do you think that's irrelevant?

5           **MR. CAVER:** May we have a sidebar?

6           **THE COURT:** Sure.

7           **(The following proceedings were had at the sidebar, out of**  
8           **the presence and hearing of the jury:)**

9           **THE COURT:** All right. From what I understand of the  
10          **evidence, Government's 7 is a bag that contains individual bags**  
11          **within it.**

12          **MR. KARNER:** Yes.

13          **MR. CAVER:** Yes.

14          **THE COURT:** And there are how many individual bags in  
15          **there?**

16          **MR. KARNER:** Total of eight.

17          **THE COURT:** And from what I understand of the evidence,  
18          **and correct me if I'm wrong, one of these bags contains**  
19          **1.2 grams?**

20          **MR. KARNER:** Yes.

21          **THE COURT:** All right. And what's your objection?

22          **MR. CAVER:** It's my understanding the weight of the  
23          **crack cocaine that we were all talking about in the indictment**  
24          **is 1.2 grams. I understand there's a gross weight of more, but**  
25          **asking him about the other bags with the implication that the**

**Reffett - Redirect**

1 rest of the bags contained crack cocaine when that's not in  
2 evidence, I object to it.

3 MR. KARNER: It goes to the weight, and he's allowed  
4 based on the appearance and the weight and the way it's  
5 packaged --

6 MR. CAVER: To testify that it's crack cocaine?

7 MR. KARNER: No.

8 MR. PEDERSEN: He can give an opinion on that, too.

9 MR. KARNER: Yeah, he can give an opinion on that, but  
10 also that it's consistent with an intent to distribute.

11 MR. CAVER: My understanding was the stipulation was  
12 that the weight of the drugs that we were talking about was  
13 1.2 grams.

14 MR. KARNER: Right.

15 MR. CAVER: And the implication to go beyond that to  
16 say it was more drugs, I object.

17 MR. KARNER: Well, I think it's relevant based on the  
18 appearance. It just goes to the weight, Judge. We don't have  
19 to prove this quantity beyond a reasonable doubt. It's going to  
20 his opinion.

21 THE COURT: What's the question you want to ask?

22 MR. KARNER: If you were to learn that there was seven  
23 untested bags that had the same contents -- that appeared to  
24 have the contents that were the same, is that consistent or  
25 inconsistent with an intent to distribute.

**Reffett - Redirect**

1           **MR. CAVER:** I think the government has already asked  
2 the question if the evidence contained within the plastic baggie  
3 and the other baggies within it is consistent with an intent to  
4 distribute. The witness' answer was that it was. I don't see  
5 any reason for us to have to rehash that to ask the same  
6 question.

7           **THE COURT:** I'll allow Mr. Karner to ask that question.

8           **MR. KARNER:** Thank you.

9           (The following proceedings were had in open court, in the  
10 presence and hearing of the jury:)

11 **BY MR. KARNER:**

12 **Q.** So, in Government's Exhibit 7, first of all, do all the  
13 packets, the contents of the individual packets in Government's  
14 Exhibit 7, do they all have the same physical characteristics?

15 **A.** Yes, they do.

16 **Q.** Okay. And if you were to learn in that exhibit that only  
17 one baggie had been tested, the contents of one baggie had been  
18 tested -- so, there was seven untested, the contents of seven  
19 untested bags -- would that change your opinion? Does that  
20 exhibit still -- does the possession of that exhibit show -- is  
21 that consistent or inconsistent with an intent to distribute?

22 **A.** It's consistent with intent to distribute.

23 **Q.** Okay. And then if you combine all that evidence -- the text  
24 messages, the handgun, the cell phone, and the \$260, in addition  
25 to Government's Exhibit 7 -- is all that evidence consistent

**Reffett - Recross**

1 with an intent to distribute the possession of those items?

2 A. Yes.

3 MR. KARNER: Nothing further.

4 THE COURT: Recross.

5 **REXCROSS EXAMINATION**

6 **BY MR. CAVER:**

7 Q. What if that cell phone wasn't present? Would that change  
8 your opinion?

9 A. No, it would not.

10 Q. Why not?

11 A. Because of the currency located, the \$260, the handgun, the  
12 drugs, the packaging of the drugs, the quantity of the drugs,  
13 and the overall weight and the lack of a manner to ingest the  
14 crack cocaine not being there, that would still render my  
15 opinion as intent to distribute.

16 Q. And what if the person didn't know about the gun, either?  
17 Would that change your opinion?

18 A. So, now we're not going -- the cell phone out and the gun  
19 out?

20 Q. I'll reask the question.

21 If there was no cell phone recovered on the person who  
22 is alleged to have been dealing drugs and that person who is  
23 alleged to have been dealing drugs didn't know about the  
24 possession of a firearm, would it change your opinion?

25 A. Based on the packaging of the cocaine, the amount of cocaine

**Reffett - Recross**

1       that was here, and the currency and the lack of a manner to  
2       ingest the cocaine, I would still say that it is an intent to  
3       distribute case.

4       Q.   Would you say that that would also, though, be consistent  
5       with personal use?

6       A.   No.

7       Q.   And why?

8       A.   Because it's not typically what we find in a drug user. In  
9       typical drug users, we don't find the larger sums of cash. With  
10      a drug user we typically find them with one to three bags.  
11      Usually the bags we find them with are \$20 bags. These bags are  
12      larger. They've got to be -- probably if one bag was tested and  
13      it came up with a 1.2 lab weight, that means that they're  
14      probably one gram bags. Typically we don't find users with this  
15      quantity of crack cocaine in their possession.

16      Q.   But it's not out of the realm of possibility?

17      A.   Well, I mean, the total -- I mean, if one bag weighs  
18      1.2 grams and there's seven --

19      Q.   But the one bag is the only one that's tested.

20      A.   And weighed.

21      Q.   Right.

22      A.   I know, but there's seven other baggies in here.

23      Q.   Is it out of the realm of possibility that it could have  
24      been --

25      A.   Highly unlikely.

**Reffett - Recross**

1     **Q. But possible?**

2     **A. I guess it would be possible, but highly unlikely.**

3     **Q. Thank you.**

4         **(Brief pause.)**

5     **BY MR. CAVER:**

6     **Q. The text messages that you reviewed talk about \$20 bag.**

7     **There's one text message in there that talks about a \$20 bag?**

8     **A. Yes.**

9     **Q. And that's not what you found, correct?**

10    **A. These bags look to be larger.**

11    **Q. Right. So, the person who was sending the text messages**  
12    **talking, as you say, about \$20 bags would not have been -- would**  
13    **not have had government's exhibit for sale; is that correct?**  
14    **Those would not be consistent?**

15    **A. That these bags would be?**

16    **Q. Correct.**

17    **A. These bags appear to be larger, but it's not to say that**  
18    **that person was out of \$20 bags.**

19    **Q. But none that you know of were related to this case,**  
20    **correct?**

21    **A. That's correct. These bags appear to be larger.**

22    **Q. Right. And those are the only drugs that were found and**  
23    **related to this case, correct?**

24    **A. The problem that we have with like this exhibit is it's**  
25    **not -- the individual baggies aren't weighed out except for the**

**Reffett - Recross**

1       one being the 1. 2.

2       Q.   Sure.   But you just testified that each of the bags appears  
3       to be bigger than a typical --

4       A.   Than a 20 bag?

5       Q.   Right.

6       A.   Yeah, they appear to be bigger than \$20 bags.

7       Q.   So, somebody sending text messages about \$20 bags wouldn't  
8       be selling these bags, correct?

9       A.   They may.

10      Q.   Well, the text messages wouldn't be referring to these bags;  
11      is that correct?

12      A.   Well, we typically find that the \$20 bags are two-tenths of  
13      a gram bags.

14      Q.   Right.   And these bags are larger than that.

15      A.   Yes.

16      Q.   So, my question is the person talking about selling \$20 bags  
17      is not selling the bags that you have in front of you as \$20  
18      bags, correct?   In your background, training, and experience as  
19      an expert witness in drugs.

20      A.   The only time that we found that the bags would be bigger  
21      than a \$20 bag like we're talking is somebody that's basically  
22      trying to build a customer base.   They may sell --

23      Q.   But can I buy these bags on the street for \$20?

24      A.   I guess that would be up to the seller, but typically they  
25      go for more dollars.

**Reffett - Further Redirect**

1     **Q. Right. And it's not common.**

2     **A. Like I said, unless you're trying to build a customer base.**

3     **Q. Okay. Thank you.**

4             **MR. CAVER: Nothing further.**

5                     **FURTHER REDIRECT EXAMINATION**

6     **BY MR. KARNER:**

7     **Q. Do drug dealers carry more than one quantity in units of**  
8     **drugs to sell?**

9     **A. Yes.**

10    **Q. Is there anything difficult or would prohibit them from**  
11    **breaking up with a razor blade the larger chunks into smaller**  
12    **chunks?**

13    **A. Yes, we've seen that.**

14             **MR. KARNER: Nothing further.**

15             **THE COURT: Anything more?**

16             **MR. CAVER: No. Thank you.**

17             **THE COURT: You may step down, Detective Reffett.**

18             **(Witness excused.)**

19             **THE COURT: Next witness, please.**

20             **MR. KARNER: Judge, may we approach for scheduling?**

21             **THE COURT: Sure.**

22             **(The following proceedings were had at the sidebar, out of**  
23     **the presence and hearing of the jury:)**

24             **MR. KARNER: Judge, that's our witnesses. That's our**  
25     **case. We'd like the lunch hour just to review our notes and**

1       make sure all the bases are covered. But our expectation would  
2       be after lunch to come back and rest.

3               THE COURT: Mr. Caver, how many witnesses do you  
4       anticipate calling?

5               MR. CAVER: I anticipate calling two witnesses, Judge.

6               MR. KARNER: Now, Detective Pruitt is here. Can he be  
7       released if the defense doesn't intend to call him?

8               MR. CAVER: Oh, I'm sorry. You're not going to call  
9       Detective Pruitt at all?

10              MR. KARNER: No.

11              MR. CAVER: We're going to call Detective Pruitt then.  
12       So, that's three witnesses.

13              THE COURT: You're going to call Pruitt and who else?

14              MR. CAVER: Pruitt, Stevens, and likely Mr. Poke.

15              THE COURT: Detective Pruitt is here.

16              MR. KARNER: He's here. What time should I tell him to  
17       report back to?

18              THE COURT: Let's have him come back at 1:30.

19              MR. KARNER: 1:30?

20              THE COURT: Yes.

21              MR. KARNER: Yes, sir.

22              MR. CAVER: Thank you, Judge.

23              THE COURT: You're welcome.

24              (The following proceedings were had in open court, in the  
25       presence and hearing of the jury:)

1           **THE COURT:** Ladies and gentlemen, I'm going to release  
2 you for lunch. As jurors in this case, you're not to discuss  
3 the case among yourselves or with anyone else or permit anyone  
4 to discuss it in your presence. You must refrain from being  
5 exposed to any media accounts of the trial while it's in  
6 progress.

7           Do not make any independent investigation of the case  
8 by reading materials, doing any research, attempting any testing  
9 or going to any location where any of the events in this case  
10 took place. If someone tries to contact you, either directly or  
11 indirectly, please notify me immediately. Let's come back at  
12 1:30.

13           (The following proceedings were had in open court, out of  
14 the presence and hearing of the jury:)

15           **THE COURT:** Okay. We'll see you in an hour.

16           **MR. CAVER:** Thank you, Judge.

17           (Whereupon, the within trial was recessed to 1:30 o'clock  
18 p.m. of the same day.)

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

<b>1</b>			
<b>2</b>			
<b>3</b>	<b>UNITED STATES OF AMERICA,</b>	)	<b>Docket No. 11 CR 50062</b>
		)	
<b>4</b>	<b>Plaintiff,</b>	)	<b>Rockford, Illinois</b>
		)	<b>Tuesday, May 7, 2013</b>
<b>5</b>	<b>v.</b>	)	<b>1:30 o'clock p.m</b>
		)	
<b>6</b>	<b>DAYTON POKE,</b>	)	
		)	
<b>7</b>	<b>Defendant.</b>	)	

**VOLUME 2  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE FREDERICK J. KAPALA, and a jury**

**APPEARANCES:**

**For the Government:**

**HON. GARY S. SHAPIRO  
Acting United States Attorney  
(327 S. Church Street,  
Rockford, IL 61101) by  
MR. MARK T. KARNER  
MR. JOSEPH C. PEDERSEN  
Assistant U. S. Attorneys**

**For the Defendant:**

**LAW OFFICE OF BRENDAN W CAVER, LTD.  
(308 West State Street,  
Suite 97,  
Rockford, IL 61101) by  
MR. BRENDAN W CAVER**

**Also Present:**

**MR. DANIEL IVANCICH  
Special Agent, ATF**

**Court Reporter:**

**Mary T. Lindbloom  
327 S. Church Street  
Rockford, Illinois 61101  
(815) 987-4486**

1           (The following proceedings were had in open court, out of  
2           the presence and hearing of the jury:)

3           **THE COURT:** 11 CR 50062, United States of America v.  
4           Dayton Poke. All parties present. Case comes before the court  
5           for a continued jury trial.

6           **MR. KARNER:** Judge, we've moved for the admission of  
7           our exhibits. I think all the exhibits have been admitted that  
8           we moved for. With that, it's our intention to rest in front of  
9           the jury when the jury returns.

10          There's one issue that comes up. It concerns Detective  
11          Pruitt. The defense has informed us they want Detective Pruitt  
12          to testify, which is fine, if he has some relevant testimony to  
13          give for them. But as your Honor knows, it's improper to call a  
14          witness strictly for the purpose of impeaching him. We'd like  
15          to know what Mr. Caver's good faith basis is for calling  
16          Detective Pruitt, what relevant evidence does he have to the  
17          defense to call him as a witness.

18          **MR. CAVER:** This detective is the lead -- was the lead  
19          detective when this was a state case. His name appears on the  
20          probable cause statement, apparently because he was the one that  
21          drafted it. Under officer it says Detective Pruitt on the  
22          probable cause statement.

23          Further, he was the first on the scene who claims to,  
24          in the narrative report, have observed my client make all kinds  
25          of motions with his injuries and his limited range of motion to

1 be able to do what Detective Pruitt says he does in a matter of  
2 moments. It is our contention that that would have been  
3 difficult for Mr. Poke to have done it.

4 If the government thinks that I'm calling Detective  
5 Pruitt or is asking the court to infer that it is my only  
6 intention to call Detective Pruitt simply to impeach him, there  
7 are reasons why I want him as an occurrence witness. Frankly,  
8 I'm shocked that the government didn't call Detective Pruitt in  
9 its case-in-chief if for no other reason than to draw the  
10 impeachment out before I had a chance to do it. But that's the  
11 government's case.

12 But there are certainly -- Detective Pruitt wrote a  
13 several page report detailing the nature of Detective Pruitt  
14 being the first on scene. Detective Nordberg testified that he  
15 was there to back Detective Pruitt up. Detective Pruitt was the  
16 first person on the scene to observe the inside of the vehicle  
17 where the cell phone was not located. We already have  
18 conflicting testimony in the government's own case through  
19 Officer Dodd that he personally recovered the cell phone from  
20 Mr. Poke, yet the probable cause statement says that it was  
21 clearly recovered from the floorboard of the vehicle.

22 These are significant factual disparities that I guess  
23 I'm perfectly happy to explain to them now that we are where we  
24 are in the case, but there is a good faith basis for me to call  
25 Detective Pruitt.

1           **MR. KARNER:** Well, I think Mr. Caver just proved my  
2 point. The probable cause statement -- Mr. Caver knows this --  
3 it came out in the suppression hearing. It will come out again.  
4 The probable cause statement was typed by Detective Stevens, who  
5 is also a defense witness. Detective Stevens is going to  
6 testify that he typed that probable cause statement, and he  
7 put -- there were some errors in it, but Detective Stevens  
8 wasn't -- he didn't show up at the scene until after the traffic  
9 stop was conducted and after the defendant was secured in the  
10 squad car.

11           Now, as to what Detective Pruitt's observations were,  
12 Mr. Caver just said what I thought he would say, and that is  
13 he's putting him on the stand, first of all, to describe  
14 observations he made with the idea of knocking him down, to try  
15 and impeach him to say, no, those weren't the observations he  
16 made because there was too many observations in too short of a  
17 time window. That's calling a witness strictly for the purpose  
18 of impeaching him. How does that advance his defense?

19           **MR. CAVER:** There's inconsistency in the probable cause  
20 statement, which on its face is purported to have been made by  
21 Detective Pruitt.

22           **MR. KARNER:** That's not true. That's not true. It's  
23 not purported to be made by Detective Pruitt. It has him  
24 identified as a detective.

25           **MR. CAVER:** The probable cause statement, in the header

1 information underneath the defendant's name and address is  
2 officer name Detective M Pruitt, Number 154. When I was a  
3 state prosecutor, the probable cause statement is typically  
4 prepared by the officer whose name appears in that line and is  
5 reviewed by the sergeant whose name usually appears in the lines  
6 below.

7 THE COURT: Well, let's find out who made this one.

8 MR. CAVER: I believe Detective Stevens did.

9 THE COURT: All right.

10 MR. CAVER: But there's an inconsistency. If Detective  
11 Stevens did make it and Detective Pruitt didn't have anything to  
12 do with it, why does Detective Pruitt's name appear in that  
13 line?

14 MR. KARNER: Because he was the reporting officer. He  
15 was the officer who was listed as the person making the arrest.  
16 Nowhere does this probable cause statement say or does any  
17 Rockford police officer lead anyone to believe that Maurice  
18 Pruitt typed this document.

19 THE COURT: Detective Stevens is going to say that he  
20 typed the probable cause statement?

21 MR. CAVER: Yes.

22 MR. KARNER: Absolutely. Yes.

23 THE COURT: Well, then you're not going to try to  
24 convey to the jury that Pruitt typed the statement?

25 MR. CAVER: That's what Detective Stevens is going to

1       testify to here at trial.

2               THE COURT:   Okay.

3               MR. CAVER:   At the motion to quash and suppress,  
4       Detective Stevens testified -- if I could have a moment.

5               (Brief pause.)

6               MR. CAVER:   At the motion to quash and suppress,  
7       Detective Stevens on Page 4, his testimony was questioned.

8               "Q. Okay. During your involvement on the case, did you have  
9       occasion to issue or draft a document known as a Rockford  
10      police department probable cause statement?

11              "A. No. "

12              THE COURT:   Well, who drafted it then?

13              MR. KARNER:   Stevens did, and he's going to testify to  
14      that. He made a mistake in that earlier testimony.

15              THE COURT:   All right. Detective Pruitt's an  
16      occurrence witness. I don't think I can tell the defense that  
17      they can't call him. Let's bring the jury in.

18              (Brief pause.)

19              THE COURT:   By the way, is Mr. Poke going to testify?

20              MR. CAVER:   Judge, I think we're going to wait to see  
21      what the testimony is from the first two defense witnesses, but  
22      I'm inclined at this point to think that he is.

23              THE COURT:   Well, let's take a brief recess, and you  
24      can tell me --

25              MR. CAVER:   I appreciate that.

1           THE COURT: -- before.

2           MR. KARNER: Is it the schedule then to argue tomorrow?

3           THE COURT: I don't know. We'll see how fast we can  
4 get through this. Have you had a chance to look at the jury  
5 instructions, Mr. Caver?

6           MR. KARNER: Mr. Caver?

7           THE COURT: Brendan, do you want to talk to me instead  
8 of talking to him?

9           MR. CAVER: I apologize.

10          THE COURT: Have you had a chance to look at the jury  
11 instructions?

12          MR. CAVER: I have.

13          (The following proceedings were had in open court, in the  
14 presence and hearing of the jury:)

15          THE COURT: Good afternoon, everyone. Mr. Karner.

16          MR. KARNER: Your Honor, the United States rests its  
17 case.

18          THE COURT: Mr. Caver, how do you wish to proceed?

19          MR. CAVER: Judge, thank you. At this time, Judge, I  
20 have a motion.

21          THE COURT: And what's that?

22          MR. CAVER: For directed finding.

23          THE COURT: All right. Well, let's send the jury out.

24          (The following proceedings were had in open court, out of  
25 the presence and hearing of the jury:)

1           **MR. CAVER:** Judge, I was working all over the lunch  
2 hour preparing the stipulation, preparing for my witnesses. I  
3 did not prepare the motion in writing for directed finding. I  
4 apologize to the court. I can do it briefly, or I could either  
5 do that or I could have it on file by the end of the day.

6           **THE COURT:** All right. Why don't you make your oral  
7 motion and follow it up in writing.

8           **MR. CAVER:** Thank you, Judge.

9           At this time, Judge, the facts taken in the light most  
10 favorable to the government suggest nothing more than  
11 circumstantial evidence. The government has not shown --

12           **THE COURT:** Well, wait, wait, wait. Before we get too  
13 far with that, what's wrong with circumstantial evidence?

14           **MR. CAVER:** Judge, in the light most favorable to the  
15 government, I would argue that the government has not shown its  
16 case.

17           **THE COURT:** I thought you said that the government's  
18 case is based on circumstantial evidence.

19           **MR. CAVER:** Well, it is, but there are also  
20 inconsistencies with the government's circumstantial evidence.  
21 There is no way to tie my client to the cell phone. The  
22 government, other than showing the mere fact that the gun --

23           **THE COURT:** Wasn't it taken from his pocket? I thought  
24 that was the evidence. It was retrieved from his shirt pocket.

25           **MR. CAVER:** That was the testimony. But in terms of

1 the text messages that's being used to show that this was a drug  
2 trafficking conspiracy, Detective Reffett testified that he  
3 based his opinion in part on the fact that the text messages  
4 outlined the defendant explaining what the drug purchases were  
5 for and explaining that the cell phone was used in order to  
6 communicate regarding the sale of the drugs.

7 THE COURT: Although when you asked him if you took the  
8 cell phone out of the equation, he still had an opinion that the  
9 evidence was consistent with drug trafficking.

10 MR. CAVER: That is correct, but that's not -- it's not  
11 the only piece of evidence that I'm relying on. It's not just  
12 the fact that the government can't tie the cell phones to my  
13 client. There's no DNA evidence. The testimony was that even  
14 the ridged surfaces that are typically present on a handgun of  
15 this sort would have DNA evidence. That was not tested.

16 The gun -- Detective Cone testified that guns are not  
17 typically handled by the barrel, and in this case the photo  
18 which has been admitted into evidence of the firearm as it was  
19 apparently found on the floorboard of the vehicle was that the  
20 barrel was sticking out, in which case it would not have been  
21 likely that my client would have handled it in that manner, if  
22 that's consistent with Detective Cone's testimony regarding guns  
23 being handled by the barrel.

24 Judge, at this time I would make the motion for  
25 directed finding based on the fact that taken in the light most

1       favorable to the government that it has not met its burden  
2       beyond a reasonable doubt based on the inconsistencies and the  
3       lack of evidence set forth by the government.

4               MR. KARNER: We've proven every element of the charged  
5       three offenses, Judge.

6               THE COURT: Viewing the evidence in the light most  
7       favorable to the government, I conclude that the record contains  
8       sufficient evidence upon which a rational jury could find the  
9       defendant guilty. I'll deny the motion, and we'll bring the  
10      jury back in.

11              MR. CAVER: Thank you, Judge.

12              THE COURT: Who's going to be your first witness?

13              MR. CAVER: Detective Pruitt.

14              (The following proceedings were had in open court, in the  
15      presence and hearing of the jury:)

16              THE COURT: Nice to see you again, folks. I missed you  
17      while you were gone.

18              Mr. Caver, call your first witness.

19              MR. CAVER: Thank you, Judge. I would call Detective  
20      Maurice Pruitt.

21              (Brief pause.)

22              (Witness duly sworn.)

23

24

25

**Pruitt - Direct**

**1 MAURICE PRUITT, DEFENDANT' S WITNESS, SWORN**

**2 DIRECT EXAMINATION**

**3 BY MR. CAVER:**

**4 Q. Good afternoon, sir. Would you please state your name and**  
**5 spell it for the court reporter?**

**6 A. Maurice Pruitt, M-a-u-r-i-c-e P-r-u-i-t-t.**

**7 Q. Detective Pruitt, how are you currently employed?**

**8 A. Detective, City of Rockford Police.**

**9 Q. For how long have you been so employed?**

**10 A. Twenty years.**

**11 Q. Detective, were you on duty on July 6th of 2011?**

**12 A. Yes.**

**13 Q. What were you doing that day?**

**14 A. I was patrolling.**

**15 Q. Were you with your partner?**

**16 A. Yes.**

**17 Q. And who was that?**

**18 A. Detective Kevin Nordberg.**

**19 Q. And when you and Detective Nordberg were on patrol, did you**  
**20 notice anything happen out of the ordinary?**

**21 A. We responded to a robbery that occurred at 7th Street/12th**  
**22 Avenue, a Quik Mart store. So, we responded to that area.**

**23 Q. So, the reason that you were in that area was because you**  
**24 received a call to respond there?**

**25 A. We heard the broadcast and responded there on our own.**

**Pruitt - Direct**

1     **Q.   So, you were driving?**

2     **A.   Yes.**

3     **Q.   So, in response to that broadcast call, you decided to**  
4     **appear there?**

5     **A.   Yes.**

6     **Q.   And after you appeared there, did you notice anything out of**  
7     **the ordinary?**

8     **A.   Yes.   When we were -- we were on 8th Street at 10th Avenue**  
9     **facing northbound.   There was a silver Chevy Impala on 8th**  
10    **Street and 10th Avenue facing southbound.**

11    **Q.   Okay.   And what did you do next?**

12    **A.   Detective Nordberg brought to my attention that he**  
13    **recognized the license plate to the car as being the same**  
14    **vehicle that he and two other detectives were performing**  
15    **surveillance on the night before.**

16    **Q.   Okay.   So, why did you pull the car over?**

17    **A.   The car made a left turn going eastbound on 10th Avenue.   I**  
18    **also turned right, eastbound on 10th Avenue, got behind the car,**  
19    **noticed as soon as I got behind the car that the car immediately**  
20    **made a right turn into a driveway without using his turn signal.**

21    **Q.   Okay.   So, what happened next?**

22    **A.   I got out of the car.   I was the driver.   I start to**  
23    **approach the driver's side window to the car.   As I'm**  
24    **approaching the driver's side door, I could see the occupant**  
25    **leaning over and rolling up his window, the driver's side window**

**Pruitt - Direct**

1       being rolled up quickly, and I could see him leaning over  
2       underneath the seat with his right hand as though he was moving  
3       something around.

4       Q.   And so, he was doing this at the same time?

5       A.   Yes.

6       Q.   Okay.   Do you know Dayton Poke?

7       A.   I don't know him personally.

8       Q.   Have you had any prior dealings with him professionally?

9       A.   No.   It's just I knew his name through previous police  
10       investigations.

11       Q.   Do you know of any injuries that Mr. Poke has?

12       A.   I was aware of injuries he had from that particular day when  
13       he mentioned he had been shot by with an AK-47.

14       Q.   Okay.   And from the time that you pulled the Inpala over,  
15       you exited the car, and you walked up to the side of the car to  
16       observe Mr. Poke rolling up the window, about how long was that  
17       period of time?

18       A.   It was within seconds.

19       Q.   When you approached the car, did Mr. Poke at some point open  
20       the door?

21       A.   Yes, he attempted to open the door and step out, and I at  
22       that point, the first time, I told him no, to stay in the car.

23       Q.   And at any point did you observe any cell phone on the  
24       floorboard of the car?

25       A.   No.

**Pruitt - Direct**

1       **Q. Do you have any reason to believe that -- well, strike that.**

2               **Approximately how many other officers would eventually**  
3       **arrive and respond to the traffic stop?**

4       **A. I don't know the exact number of officers that arrived.**  
5       **Maybe four, four or five.**

6       **Q. And did all of those officers at that point have access to**  
7       **the scene?**

8       **A. Yes.**

9       **Q. And it wasn't restricted any way from detectives or**  
10       **restricted from patrol officers, anything of that sort?**

11       **A. As far as what part restricted?**

12       **Q. The scene, in terms of the floorboard of the car.**

13       **A. It was only -- Detective Nordberg was really the only person**  
14       **that had dealings with the car.**

15       **Q. But it wasn't, for instance, that -- nobody said, for**  
16       **instance, only certain people can go by the car, that sort of**  
17       **thing?**

18       **A. Right.**

19       **Q. That was not said?**

20       **A. No.**

21       **Q. Okay. And in terms of the policy and procedure of the**  
22       **Rockford Police when securing a scene, is it ever Rockford**  
23       **Police policy to restrict the scene from anybody in that sort of**  
24       **circumstance from certain types of officers?**

25       **A. I don't quite understand.**

**Pruitt - Direct**

1     **Q. I'll ask it again. As part of your investigation, is it**  
2     **ever Rockford policy to restrict the scene from any sort of**  
3     **police officer, member of law enforcement, from being at that**  
4     **scene?**

5     **A. I can't say that I know the policy as far as restricting any**  
6     **particular officer from being at the scene.**

7     **Q. Okay. And you did not write -- you did write a narrative**  
8     **report in this case; is that correct?**

9     **A. That's correct.**

10    **Q. But you did not write any probable cause statement?**

11    **A. That's correct.**

12           **MR. CAVER: Judge, may I have a moment?**

13           **(Brief pause.)**

14    **BY MR. CAVER:**

15    **Q. Detective Pruitt, when you were at the scene, were you**  
16    **with -- from the time that you got to the scene, were you with**  
17    **Mr. Poke the entire time?**

18    **A. Yes.**

19    **Q. And at what point -- did you ever hand him off, so to speak,**  
20    **to any other officer, any other detective?**

21    **A. I want to say he was escorted to Officer Dodd's patrol car,**  
22    **but I also stayed with him during that time.**

23    **Q. So, you were with him?**

24    **A. Yes.**

25    **Q. Okay. So, you saw Mr. Poke up until the time that he was**

**Pruitt - Direct**

1       **taken away and presumably taken to the Winnebago County Jail?**

2       **A. No. Only to the point from the scene to the Public Safety**  
3       **Building, but not from the Public Safety Building to the jail.**

4       **Q. Okay. So, you were with him from the time that you first**  
5       **saw him you first saw him rolling up the window and doing**  
6       **whatever he was with his right hand?**

7       **A. Yes.**

8       **Q. And then you were there until we was put in a squad car for**  
9       **transport?**

10      **A. Yes.**

11      **(Brief pause.)**

12      **BY MR. CAVER:**

13      **Q. Detective Pruitt, if you know, who searched Mr. Poke that**  
14      **day, his person?**

15      **A. I don't know who searched him that day. I don't know if it**  
16      **was Officer Dodd prior to him transporting him to the Public**  
17      **Safety Building or not.**

18      **Q. But you don't know?**

19      **A. I don't know.**

20      **Q. And you didn't search him?**

21      **A. No.**

22      **Q. Okay.**

23               **MR. CAVER: Thank you, Judge. No further questions.**

24               **MR. KARNER: Judge can we have just a minute, please?**

25      **(Brief pause.)**

**Stevens - Direct**

1                   **MR. KARNER: No questions, Judge.**

2                   **THE COURT: You can step down, Detective Pruitt. Thank**  
3 **you for your help.**

4                   **(Witness excused.)**

5                   **THE COURT: Next witness, please.**

6                   **MR. CAVER: Judge, the defense calls Sergeant Joseph**  
7 **Stevens.**

8                   **(Brief pause.)**

9                   **(Witness duly sworn.)**

10                   **JOSEPH STEVENS, DEFENDANT' S WITNESS, SWORN**

11                   **DIRECT EXAMINATION**

12                   **BY MR. CAVER:**

13                   **Q. Good afternoon, sir.**

14                   **A. Hello.**

15                   **Q. Would you please state your name and spell it for the court**  
16 **reporter?**

17                   **A. Joe Stevens, S-t-e-v-e-n-s.**

18                   **Q. Sergeant, how you currently employed?**

19                   **A. I'm a detective-sergeant with the Rockford City Police**  
20 **Department assigned to the violent crime unit.**

21                   **Q. For how long have you been so employed?**

22                   **A. Nineteen years.**

23                   **Q. And were you on duty on July 6th of 2011?**

24                   **A. Yes.**

25                   **Q. And what were you doing that day?**

**Stevens - Direct**

1     **A. At that time I was a supervisor of the gang unit. Our unit**  
2     **had been assigned to night hours to assist patrolling areas of**  
3     **the city that we felt were hot, for lack of a better term**

4     **Q. So, high crime areas?**

5     **A. Yes.**

6     **Q. And did you have an occasion to report to a traffic stop by**  
7     **Detectives Pruitt and Nordberg?**

8     **A. Yes.**

9     **Q. And did you prepare a probable cause statement in reference**  
10    **to that?**

11    **A. I did, yes.**

12    **Q. Okay. And that probable cause statement, I'm going to show**  
13    **you what's previously marked as Defense Exhibit Number 3. Is**  
14    **that the probable cause statement that you prepared in relation**  
15    **to this case?**

16    **A. Yes.**

17    **Q. And in that probable cause statement, is there mention about**  
18    **a cell phone being found on the floorboard of a car?**

19    **A. Yes.**

20    **Q. Okay. And where did you get that information?**

21    **A. I made an assumption when we were talking to the detectives.**  
22    **There was a phone cord in the car. When I typed this, I assumed**  
23    **the phone was with the cord, and it was not.**

24    **Q. Okay. And so, at the time that you made that assumption,**  
25    **there was no basis in fact for writing what you wrote in**

**Stevens - Direct**

1 reference to the cell phone in that probable cause statement?

2 A. Correct.

3 Q. And is it important when you're writing a probable cause  
4 statement to get the facts exactly as they're observed?

5 A. Yes.

6 Q. Okay. And is it typical to write an entry in a probable  
7 cause statement that's based solely on an assumption?

8 A. I'm sorry. I don't understand the question.

9 Q. Is it typical to make an entry in a probable cause  
10 statement, such as the one you made regarding the cell phone, is  
11 it typical to make such a statement based on an assumption, as  
12 opposed to an observation?

13 A. No.

14 Q. Did any other detective, as far as you know, tell you that  
15 information?

16 A. No.

17 Q. And you had previously testified in this case on  
18 August 31st, 2012; is that correct?

19 A. Yes.

20 Q. And it was your testimony at that time that you did not  
21 prepare the probable cause statement?

22 A. Yes. The probable cause statement is a snapshot of the  
23 incident prior to reports being written by the detectives and  
24 the officers. It's meant for the beginning of the arrest  
25 process so that persons in the criminal justice field can view

**Stevens - Direct**

1       that statement and get a quick look at what the incident -- how  
2       the incident occurred and what happened.

3               Frequently, there are many people who contribute facts  
4       to the probable cause statement, and it's not meant for an all  
5       encompassing, very detailed account of the incident. It's meant  
6       only for a snapshot so that those who are initially seeing the  
7       process forward can get an idea of what happened.

8       Q.   Okay. And for them to get an idea of what happened, it  
9       would be important to get all of the facts correct based on  
10      firsthand observations, as opposed to assumption, correct?

11      A.   Correct.

12      Q.   And so, your testimony at the motion to quash and suppress  
13      was incorrect, and your testimony here today is the truth?

14      A.   Yes.

15      Q.   Okay.

16               MR. CAVER: No further questions at this time.

17               MR. KARNER: No questions, Judge.

18               THE COURT: You may step down, Sergeant.

19               (Witness excused.)

20               MR. CAVER: Judge, may I just have a moment with  
21      Mr. Karner?

22               THE COURT: Sure.

23               (Brief pause.)

24               MR. CAVER: Judge, at this time I would ask to read  
25      into the record a stipulation regarding comprehensive health

1 record prepared at the Winnebago County Jail.

2 THE COURT: A what?

3 MR. CAVER: A health record prepared at the Winnebago  
4 County Jail that was prepared on July 15th of 2011 by Mr. Poke.

5 THE COURT: It's a stipulation?

6 MR. CAVER: Yes, Judge, it is a stipulation.

7 THE COURT: Certainly.

8 MR. CAVER: Thank you.

9 A stipulation regarding medical records. It is hereby  
10 stipulated to and agreed by, among, and between Dayton Poke,  
11 individually and through his attorney, Brendan W Caver, and the  
12 United States of America, by Gary S. Shapiro, United States  
13 Attorney for the Northern District of Illinois, as follows.

14 The medical records from the Winnebago County Jail in  
15 Rockford, Illinois, Bates stamped 74811-000789 through  
16 74811-000791 are admissible, were created during medical  
17 treatment of Dayton Poke, and were prepared and kept in the  
18 ordinary course of business of the Winnebago County Jail and  
19 were not prepared in anticipation or contemplation of  
20 litigation.

21 The entry on page 74811-000790 referencing cocaine last  
22 used on 7-6-11 under Section 16 was made by Dayton Poke on  
23 July 15th, 2011.

24 So stipulated and agreed to on May 7th, 2013, by  
25 counsel for the government, as well as Mr. Poke and myself.

1       **Thank you.**

2               **THE COURT: May I have the stipulation?**

3               **MR. CAVER: Yes.**

4               **THE COURT: Tim, can you get it for me?**

5       **(Said document was tendered to the court.)**

6               **MR. CAVER: Judge, if I may have a moment?**

7               **THE COURT: Tim, would you take the jury out, please?**

8       **(The following proceedings were had in open court, out of**  
9       **the presence and hearing of the jury:)**

10              **THE COURT: You're going to discuss with Mr. Poke**  
11      **whether he wants to testify or not?**

12              **MR. CAVER: That's right, Judge.**

13              **THE COURT: All right.**

14      **(Brief pause.)**

15              **MR. CAVER: Judge, at this time I think Mr. Poke and I**  
16      **have had several conversations about whether or not he would**  
17      **like to testify in this case. We have seen how the case has**  
18      **unfolded, and at this time it's Mr. Poke's decision that he does**  
19      **not wish to testify.**

20              **THE COURT: All right. May I talk to Mr. Poke?**

21              **MR. CAVER: Absolutely.**

22              **THE COURT: Mr. Poke, you have the right to determine**  
23      **whether you want to testify or whether you don't want to**  
24      **testify. If you don't testify, it cannot -- I'll instruct the**  
25      **jury that it cannot be used in any way against you.**

1           But you alone possess this right. You should make this  
2           decision after consulting with Mr. Caver. He's an experienced  
3           trial attorney, and he has much to offer you in the way of  
4           advice. But it's your case, your welfare is on the line, and  
5           it's your decision to make. And I want to make sure that the  
6           decision that you've arrived at is made after what you consider  
7           is your best interests and is not made by Mr. Caver. Can you  
8           give me that assurance?

9           DEFENDANT POKE: Yes, sir.

10          THE COURT: Has anyone forced, threatened, or coerced  
11          you to decide not to testify?

12          DEFENDANT POKE: Do the deduction of my three points  
13          count?

14          THE COURT: You're asking me a sentencing question, and  
15          we don't need to talk about sentencing.

16          DEFENDANT POKE: No, I'm just joking. But no.

17          THE COURT: Okay. Nobody has forced, threatened, or  
18          coerced you to decide not to testify?

19          DEFENDANT POKE: No, sir.

20          THE COURT: And this decision is a personal decision  
21          made by you after consultation with Mr. Caver; is that correct?

22          DEFENDANT POKE: Yes, sir.

23          THE COURT: All right. I'll find that the decision not  
24          to testify is knowing and voluntarily made. I'll bring the jury  
25          in. You can rest in front of the jury. I'll send them out, and

1 we'll go through jury instructions.

2 MR. CAVER: Thank you, Judge.

3 THE COURT: All right. Bring the jury back in, Tim  
4 (The following proceedings were had in open court, in the  
5 presence and hearing of the jury:)

6 THE COURT: Mr. Caver, how do you wish to proceed?

7 MR. CAVER: Judge, at this time the defense rests.

8 THE COURT: All right. Tim, take the jury out.

9 Folks, I want you to know that places like the YMCA and  
10 Peak Fitness charge people a lot of money to put them through an  
11 exercise routine like the one you've had this afternoon. I want  
12 you to know that we're not going to charge you a dime. It's all  
13 free.

14 (The following proceedings were had in open court, out of  
15 the presence and hearing of the jury:)

16 THE COURT: All right. Jury instructions.

17 MR. CAVER: Yes, Judge.

18 THE COURT: All right. Government's 1. Any objection?

19 MR. CAVER: I'm sorry, Judge.

20 THE COURT: Any objection to Government's 1?

21 MR. CAVER: No, Judge.

22 THE COURT: Government's 1 will be given.

23 Government's 2.

24 MR. CAVER: No objection.

25 THE COURT: Government's 2 will be given.

**Instructions Conference**

**1       Government' s 3.**

**2               MR. CAVER:   No objection.**

**3               THE COURT:   Three will be given.   Four.**

**4               MR. CAVER:   No objection.**

**5               THE COURT:   Four is given.   Five.**

**6               MR. CAVER:   No objection.**

**7               THE COURT:   Five is given.   Six.**

**8               MR. CAVER:   No objection, Judge.**

**9               THE COURT:   Six will be given.   Seven.**

**10              MR. CAVER:   No objection.**

**11              THE COURT:   Seven is given.   Eight.**

**12              MR. CAVER:   No objection.   That was number eight.**

**13              THE COURT:   Right.   I have a 9A and a 9B.   I assume**  
**14       you' re withdrawing one.**

**15              MR. KARNER:   I will, yes, Judge.**

**16              THE COURT:   I suppose you should withdraw 9A.**

**17              MR. CAVER:   9A.**

**18              MR. KARNER:   Yes, we' ll withdraw 9A, Judge.**

**19              MR. CAVER:   And we have no objection to 9B.**

**20              THE COURT:   9B will be given.   Ten.**

**21              MR. CAVER:   No objection.   Although --**

**22              MR. KARNER:   I don' t think this really --**

**23              MR. CAVER:   It' s not really relevant.**

**24              MR. KARNER:   -- is an issue.**

**25              THE COURT:   Do you want to withdraw?**

**Instructions Conference**

1           **MR. KARNER:**   No.

2           **MR. CAVER:**   I mean, I don't even remember any testimony  
3           about any -- well, about the attorneys interviewing witnesses.  
4           But I suppose I don't have any strenuous objection one way or  
5           the other.   If the government wants to give it, I don't have any  
6           objection.   I just think it's confusing.

7           **MR. KARNER:**   I'll make it easy for the record.   We'll  
8           withdraw it.

9           **THE COURT:**   All right.   Ten's withdrawn.   Eleven.

10          **MR. CAVER:**   No objection.

11          **THE COURT:**   Eleven is given.   Twelve.   Withdrawn?

12          **MR. CAVER:**   Is the government withdrawing?

13          **MR. KARNER:**   Yes.

14          **THE COURT:**   Twelve is withdrawn.

15          **MR. KARNER:**   Well -- yeah, withdrawn.   Yes.

16          **THE COURT:**   Thirteen.

17          **MR. CAVER:**   We're on 13, correct, Judge?

18          **THE COURT:**   Right.

19          **MR. CAVER:**   No objection.

20          **THE COURT:**   Thirteen is given.   Fourteen.   Withdrawn?

21          **MR. KARNER:**   Well, not really, Judge, because wouldn't  
22          that apply to the text messages?

23          **THE COURT:**   Well, what testimony do we have of him  
24          committing crimes other than the one charged in the indictment?

25          **MR. KARNER:**   Well, the text messages.   We're arguing

**Instructions Conference**

1       those were drug negotiations.

2               **MR. CAVER:** That's not relevant to a consideration as  
3       to whether or not he committed those crimes. I mean, even in  
4       the last portion, it says keep in mind the defendant is on trial  
5       here for possessing with intent to distribute cocaine base.  
6       Certainly, if that's part of your evidence against the defendant  
7       about the charges of the indictment, we understand that, but I  
8       mean, I don't -- we would object.

9               **MR. KARNER:** Well, it's there for the protection of the  
10       defendant, but if the defendant doesn't want it, we'll withdraw  
11       it.

12              **THE COURT:** Pardon me?

13              **MR. KARNER:** If the defendant doesn't want it, we'll  
14       withdraw it, Judge.

15              **THE COURT:** Fourteen is withdrawn.

16              **MR. CAVER:** Judge, may I just have a moment, please?

17              **THE COURT:** Sure.

18              (Brief pause.)

19              **THE COURT:** Mr. Caver, it looks like if you want it,  
20       you can have it. If you don't want it, they'll withdraw it.

21              **MR. CAVER:** Yes. I'm sorry, Judge. We would ask for  
22       it to be withdrawn and not provided.

23              **THE COURT:** Fourteen is withdrawn. Fifteen.

24              **MR. KARNER:** Judge, this is going to have to be  
25       modified because Carl McClary there is no stipulation to. So,

**Instructions Conference**

1 we'll have to resubmit under 15A eliminating the name Carl  
2 McClary.

3 THE COURT: Any objection to 15A with the deletion of  
4 Carl McClary?

5 MR. CAVER: No, no objection.

6 THE COURT: Fifteen is withdrawn. 15A will be given,  
7 and 15A will delete the name Carl McClary.

8 MR. KARNER: We'll withdraw 16 because we never got to  
9 the recorded conversation.

10 THE COURT: Sixteen is withdrawn. 17. Any objection?

11 MR. CAVER: No objection.

12 THE COURT: Seventeen will be given. Eighteen.

13 MR. CAVER: May I just have a brief moment, Judge?

14 (Brief pause.)

15 MR. CAVER: No objection, Judge.

16 THE COURT: Eighteen will be given. Nineteen.

17 MR. CAVER: No objection.

18 THE COURT: Nineteen is given. Twenty. Why are we  
19 talking about joint possession? It may have had some relevance  
20 if Cistrunk would have testified, but he didn't.

21 MR. KARNER: Well, I'm trying to remember if it came  
22 out that the car was not registered to him I don't think it  
23 was. And that never came out one way or the other. I have no  
24 problem deleting the second paragraph, Judge.

25 THE COURT: Mr. Caver, do you wish the second paragraph

**Instructions Conference**

1       in or out?

2               **MR. CAVER:** I'm sorry. If I may just have a moment.

3               **(Brief pause.)**

4               **MR. CAVER:** Judge, we would ask for the second  
5 paragraph to be deleted. Judge, I don't believe we have any  
6 legal basis to object to the first paragraph, given how the  
7 government presented its case.

8               **THE COURT:** All right. I'll show 20 is withdrawn.  
9 I'll ask the government to prepare a 20A which deletes the  
10 second paragraph, and I will give 20A. 21.

11              **MR. CAVER:** No objection.

12              **THE COURT:** 21 will be given. 22.

13              **MR. CAVER:** No objection.

14              **THE COURT:** 22 is given. 23.

15              **MR. CAVER:** No objection.

16              **THE COURT:** 23 is given. 24.

17              **MR. CAVER:** No objection.

18              **THE COURT:** 24 is given. 25.

19              **MR. CAVER:** No objection.

20              **THE COURT:** 25 is given. 26.

21              **MR. CAVER:** No objection.

22              **THE COURT:** 26 is given. 27.

23              **MR. CAVER:** No objection.

24              **THE COURT:** 27 is given. 28.

25              **MR. CAVER:** No objection.

**Instructions Conference**

1           **THE COURT:** 28 is given. 29.

2           **MR. CAVER:** No objection.

3           **THE COURT:** 29 is given. 30.

4           **MR. CAVER:** No objection.

5           **THE COURT:** 30 is given. 31.

6           **MR. CAVER:** Judge, I'm sorry. May I have just a quick  
7 moment?

8           **(Brief pause.)**

9           **MR. CAVER:** Thank you, Judge. Government's 31?

10          **THE COURT:** Right.

11          **MR. CAVER:** No objection.

12          **THE COURT:** 31 will be given. 40.

13          **MR. CAVER:** I would just ask -- I don't think there was  
14 any evidence as to whether the weapon was stolen or -- well,  
15 there was evidence as to number five, but not number four. I  
16 would ask if we could strike number four and change the  
17 numbering accordingly.

18          **MR. KARNER:** These are factors that are just meant  
19 to -- this comes right of the instructions that were given  
20 before. It's not that --

21          **THE COURT:** Okay. Well, let me say this. It's a  
22 nonpattern instruction, and we already have an instruction for  
23 the definition of furtherance. Although, I would think that the  
24 defense would want four in because if it was stolen, it seems to  
25 me that it's telling us it's more likely in furtherance of a

**Instructions Conference**

1     **drug trafficking crime. If it's not stolen, it would be**  
2     **evidence against or mitigate against it being used in drug**  
3     **trafficking.**

4             **MR. CAVER: Judge, if I may have a moment.**

5             **MR. KARNER: Judge, I believe the commentary to the in**  
6     **furtherance instruction suggests that this or one like it ought**  
7     **to be given.**

8             **THE COURT: May I see it, the commentary?**

9             **MR. KARNER: I didn't bring it down with me. I didn't**  
10    **know that we would get to it this quick.**

11            **MR. CAVER: Judge, I would ask that paragraph four be**  
12    **removed, after consulting with my client.**

13            **THE COURT: All right. But you have no objection to 40**  
14    **with four removed; is that correct?**

15            **MR. CAVER: Correct.**

16            **MR. KARNER: Okay. We'll remove it, Judge.**

17            **THE COURT: All right. I'll show -- you'll withdraw**  
18    **40A?**

19            **MR. KARNER: I'm sorry. Withdraw 40 and ask leave to**  
20    **resubmit --**

21            **THE COURT: 40A without four.**

22            **MR. KARNER: That's correct, Judge.**

23            **THE COURT: 41.**

24            **MR. CAVER: Judge, we have no objection to 41.**

25            **THE COURT: 41 will be given. 42.**

**Instructions Conference**

1                   **MR. CAVER:**   No objection.

2                   **THE COURT:**   42 will be given.

3                   **MR. KARNER:**   Judge, we're going to withdraw 43.   I  
4                   think it's redundant.

5                   **MR. CAVER:**   Withdraw 42 or 43?

6                   **MR. KARNER:**   43.   I think we already have the  
7                   possession of a firearm in furtherance.

8                   **THE COURT:**   43 is withdrawn.

9                   **MR. KARNER:**   Yes, Judge, because I think it's duplicate  
10                  to Government's 30.

11                  **THE COURT:**   All right.   Any objection to the jury  
12                  verdict forms?

13                  **MR. CAVER:**   No objection, Judge.

14                  **THE COURT:**   All right.   I'd like the government to  
15                  prepare 14 clean copies.

16                  **MR. KARNER:**   I'm sorry.   How many?

17                  **THE COURT:**   Fourteen for the jurors and the alternates.

18                  **MR. KARNER:**   15 clean copies.   One for your Honor?

19                  **THE COURT:**   Yes, I'd like one, and I suppose you'd like  
20                  a couple.

21                  **MR. KARNER:**   So, we need 17 clean copies.   And then do  
22                  you want me to submit an entire set of the corrected numbered  
23                  copies?

24                  **THE COURT:**   No.   I'll just read a clean copy.

25                  **MR. KARNER:**   Okay.   So, I'll go make the corrections on

**Instructions Conference**

1       17, clean copies.

2               **THE COURT:** Actually, in order to file it, I'll need a  
3 set with the correctly numbered copies, and I guess I'll read  
4 from that. So, you can just give that to me.

5               **MR. KARNER:** Okay. So, one set of correctly numbered  
6 copies, 17 clean copies.

7               **THE COURT:** Right.

8               **MR. KARNER:** May I go do that and tender that now?

9               **THE COURT:** Sure.

10              **MR. KARNER:** That's going to take us some time, Judge.

11              **THE COURT:** Yes, I know. Well, I'll give you some time  
12 to prepare your closing.

13              **MR. KARNER:** Pardon?

14              **THE COURT:** I'll give you some time -- that will give  
15 you some time to prepare your closing.

16              **MR. KARNER:** Yes.

17              **THE COURT:** How much time do you think you'll need?

18              **MR. KARNER:** Come back here at 3:30?

19              **THE COURT:** How about 3:15? 3:20? 3:30.

20              **MR. KARNER:** Okay. Thank you.

21              **(Brief recess.)**

22              **THE COURT:** All right. There are just a couple small  
23 details I wanted to tack down before I get the jury  
24 instructions, and that is I assume that the parties wish all of  
25 the exhibits that have been admitted in evidence will go back to

1 the jury room?

2 MR. PEDERSEN: Judge, the only one that we're not going  
3 to ask, as far as the government's exhibits, is Number 19.  
4 Those were the three compact disks that Detective Voyles  
5 testified about. There's other information on the disks that is  
6 not relevant for what was testified to.

7 THE COURT: Well, they don't have any way to play it,  
8 anyway.

9 MR. PEDERSEN: Right.

10 MR. CAVER: We don't have any objection to that. We  
11 would just ask that Defense 1 and 2 go back and Defense 4.

12 THE COURT: What's Defense 4?

13 MR. CAVER: Oh, I'm sorry. We have the stipulation.  
14 I'm sorry. Just 1 and 2.

15 THE COURT: All right.

16 MR. PEDERSEN: Judge, what about the firearm? Are we  
17 going to send --

18 THE COURT: Let me get this first. You have no  
19 objection to the optical disk not going back; is that correct?

20 (No response.)

21 THE COURT: Mr. Caver?

22 MR. CAVER: Yes, Judge.

23 THE COURT: I need some answers on some of these  
24 things.

25 MR. CAVER: I apologize, Judge.

1           **THE COURT:** The question is 19. You don't have any  
2           objection to that not going back.

3           **MR. CAVER:** No, no objection.

4           **THE COURT:** All right. How about seven, the cocaine?

5           **MR. CAVER:** Judge, well, if it's been admitted. I  
6           mean, we don't have any objection.

7           **THE COURT:** It's been admitted. The question is --

8           **MR. CAVER:** The reasonable -- I mean, we don't have any  
9           problem with it going back to the jury.

10          **THE COURT:** All right. What about the gun?

11          **MR. CAVER:** Judge, if I may have a moment?

12          **THE COURT:** Sure.

13          (Brief pause.)

14          **MR. CAVER:** No, Judge, no objection.

15          **MR. PEDERSEN:** Judge --

16          **THE COURT:** Do you want the -- no objection to it going  
17          back or not going back?

18          **MR. CAVER:** No objection to it going back to the jury.

19          **MR. PEDERSEN:** Judge, what we've done in the past when  
20          there's a handgun and then ammunition, the ammunition is  
21          included in Government's Exhibit 6A. Typically, we do not send  
22          that back to the jury. If they request to see it, we make them  
23          give us the gun, and then we'll give them the ammunition, so  
24          they don't have the gun and the ammunition in the jury room

25          **THE COURT:** Any objection to that procedure?

1                   **MR. CAVER:** Judge, there is no objection to that  
2                   **procedure.**

3                   **THE COURT:** Could I look at seven? I'll just instruct  
4                   the jury not to tamper with -- not to tamper with seven.

5                   You can put the instructions in any order you see fit,  
6                   but just put them in the order that you want them read.

7                   **MR. PEDERSEN:** I'll have Mr. Karner give Mr. Caver a  
8                   copy, as well.

9                   **MR. CAVER:** May I just have a second with Mr. Pedersen?

10                  **THE COURT:** Sure.

11                  (Brief pause.)

12                  **MR. CAVER:** Judge, at this time I have told  
13                  Mr. Pedersen that my client has requested that we reopen the  
14                  proofs to admit a piece of evidence that was previously  
15                  disclosed to the government and previously stipulated to as far  
16                  as authenticity. The reason that -- well, it is a drug test  
17                  from a year previous to the arrest.

18                  What I've explained to Mr. Poke is that I did not feel  
19                  that that drug test, based on how the testimony came in, both in  
20                  the government's case-in-chief and the defense case, was  
21                  relevant to the issues that we were presenting to the jury. So,  
22                  that's the basis for my motion to request to reopen the defense  
23                  case, to have the court consider whether or not that drug test  
24                  is relevant.

25                  **THE COURT:** What's the context of the drug test?

1           **MR. CAVER:** Just to show, Judge, that my client --

2           **THE COURT:** No. Tell me how it was taken, why was it  
3 taken, what form was it.

4           **MR. CAVER:** It was taken as part of medical treatment  
5 that was administered to him at SwedishAmerican Hospital. It  
6 was a -- I believe it was a blood test showing that he tested  
7 positive for cocaine.

8           **MR. PEDERSEN:** What was the date?

9           **MR. CAVER:** Registration date was April 1st of 2010,  
10 and it was a presumptive positive test for cocaine.

11           **MR. PEDERSEN:** Judge, if we could have a moment to  
12 consider that motion that the defendant has made, and then maybe  
13 I could get Mr. Karner back up here and we can respond.  
14 Initially, our position was that it's irrelevant because we  
15 stipulated to the authenticity. We said we'd be willing to  
16 that. But as to relevance, this test occurred a year and three  
17 months prior to the arrest in this case, and the fact that he  
18 had cocaine in his system at that time we don't believe has any  
19 relevance to the issues that the jury has to decide.

20           **THE COURT:** How is it relevant, Mr. Caver?

21           **MR. CAVER:** Judge, it's our position that it shows that  
22 Mr. Poke had a history of drug abuse and that he was a personal  
23 user of cocaine. The government is alleging in its indictment  
24 that this was a possession with intent to deliver, and this  
25 confirms that, in fact -- and it would go to corroborate my

1 argument that the drugs were for personal use that were found in  
2 the car that day.

3 THE COURT: Well, that assumes that drug dealers don't  
4 use cocaine.

5 MR. CAVER: Well, what my argument would be would be  
6 that because this test shows that he did use drugs, that it's  
7 confirmation and argument that I can say the cocaine was found  
8 in the center console. It was the car that was driven by  
9 Mr. Poke. And Mr. Poke takes responsibility for those drugs.  
10 And look here. We also have an April 2010 positive drug test  
11 for cocaine that shows that he was using drugs at least  
12 15 months prior to the time that the drugs were found in his car  
13 and that, therefore, he had a history and a pattern of drug use  
14 himself. It would tend to confirm that the reason that the  
15 drugs were in the car were for his use.

16 THE COURT: All right. But it doesn't negate the  
17 possibility that he's a dealer.

18 MR. CAVER: No, that's correct. But at least it may  
19 add something to my argument to suggest that the drugs were for  
20 personal use. That would be the reason.

21 MR. PEDERSEN: Judge, maybe if there was some other  
22 evidence that showed a history of cocaine use by the defendant,  
23 but one test a year and three months prior to his arrest I don't  
24 believe constitutes a history of drug use by the defendant.

25 THE COURT: All right. I think it goes to weight

1       rather than admissibility. I'll allow it in.

2               MR. CAVER: Okay. Thank you, Judge.

3               THE COURT: What form is this going to be then? An  
4 exhibit?

5               MR. CAVER: It would just be the report itself. I will  
6 put a label on it for a defense exhibit.

7               MR. PEDERSEN: We're going to have to prepare another  
8 stipulation because he doesn't have a witness to introduce it.  
9 We indicated that we would agree to the --

10              THE COURT: Why don't you prepare another  
11 stipulation --

12              MR. CAVER: Okay. Thank you, Judge.

13              THE COURT: -- with that report. And I'll read that to  
14 the jury just before we close.

15              MR. CAVER: Thank you, Judge.

16              MR. PEDERSEN: Were there any other issues?

17              THE COURT: No. I think I'm all right.

18              MR. PEDERSEN: Okay. Thank you.

19              THE COURT: See you at 3:30.

20              (Brief recess.)

21              THE COURT: Back on the record. I've had a chance to  
22 receive the jury instructions. Did you receive them?

23              MR. CAVER: Judge, I did receive them Sorry. I  
24 didn't get organized. May I just have a brief moment?

25              THE COURT: Do all the jury instructions have verdict

1 forms in them? Tim do your jury instructions have verdict  
2 forms?

3 THE COURT SECURITY OFFICER: Let me check. I don't see  
4 any.

5 THE COURT: None?

6 THE COURT SECURITY OFFICER: No.

7 THE COURT: All right.

8 MR. CAVER: Judge, we would agree that they are as we  
9 discussed in conference. Would the court like the exhibits now?

10 THE COURT: Pardon me?

11 MR. CAVER: Would the court like exhibits now?

12 THE COURT: No. We'll give them to Tim to take back.

13 MR. CAVER: Very good.

14 THE COURT: I would like -- oh, you're going to read  
15 that stipulation. After you get done with the stipulation, give  
16 it to me, and I'll put it up here.

17 MR. CAVER: Yes. Thank you, Judge.

18 Judge, would you like me to read that when the jury  
19 comes back?

20 THE COURT: What?

21 MR. CAVER: I'll read the stipulation when the jury  
22 comes back?

23 THE COURT: All right.

24 MR. CAVER: Thank you.

25 THE COURT: All right, Tim You can call the jury in.

1           By the way, the jurors will get hard copies of the  
2 exhibits?

3           MR. KARNER: Yes.

4           MR. CAVER: Yes.

5           MR. KARNER: We just have one set prepared, Judge.

6           THE COURT: That's all right. We just need one set of  
7 exhibits to go to the jury. They can pass that around.

8           (The following proceedings were had in open court, in the  
9 presence and hearing of the jury:)

10          THE COURT: Ladies and gentlemen, I'm going to reopen  
11 the proofs in this case for one more stipulation that the  
12 parties have.

13          Mr. Caver, would you please read that stipulation into  
14 the record?

15          MR. CAVER: Thank you, Judge.

16          This is a stipulation regarding medical records. It is  
17 hereby stipulated to and agreed by, among, and between Dayton  
18 Poke, individually and through his attorney, Brendan W Caver,  
19 and the United States of America, by Gary S. Shapiro, United  
20 States Attorney for the Northern District of Illinois, as  
21 follows.

22          The laboratory results contained within Pages 21 and 22  
23 of Dayton Poke's medical record from SwedishAmerican Hospital in  
24 Rockford, Illinois, in regard to a positive cocaine test on  
25 March 31st, 2010, with a run date of April 20th, 2010, are

1        authentic, true and accurate copies of the medical record on  
2        file with SwedishAmerican Hospital in Rockford, Illinois, were  
3        created during medical treatment of Dayton Poke, were prepared  
4        and kept in the ordinary course of business of that hospital,  
5        and were not prepared in anticipation or contemplation of  
6        litigation. They're admitted into evidence as Defense Exhibit  
7        Number 3. So stipulated and agreed to on May 7th, 2013, by  
8        Mr. Poke, myself, and Mr. Karner from the United States  
9        Attorney's Office.

10                THE COURT: All right. The defense rests then?

11                MR. CAVER: The Defense rests.

12                THE COURT: Tim, could you get the stipulation for me?

13                Ladies and gentlemen, you have heard all the evidence  
14        in this case, but the trial has not ended. At this time the  
15        lawyers have the opportunity to make closing arguments. During  
16        closing arguments the attorneys have an opportunity to summarize  
17        the evidence and suggest to you reasonable inferences to be  
18        drawn from the evidence. They may also suggest their version of  
19        how the law applies to the facts in this case. What the lawyers  
20        say during closing argument is not evidence and should not be  
21        considered by you as evidence. After you have heard the  
22        arguments, I will instruct you on the law, and then you will  
23        retire to the jury room to consider your verdicts.

24                The government may close.

25                MR. PEDERSEN: Thank you, your Honor.

**Pedersen - Opening Argument****1 OPENING ARGUMENT ON BEHALF OF THE GOVERNMENT**

**2 MR. PEDERSEN:** Ladies and gentlemen, at the beginning  
**3 of this trial, we told you that the evidence would show that**  
**4 this defendant, Dayton Poke, possessed crack cocaine with the**  
**5 intent to distribute it, and he also possessed a firearm as a**  
**6 convicted felon and in furtherance of the drug trafficking crime**  
**7 of possessing crack cocaine with the intent to distribute on**  
**8 July 6th of 2011, and that is exactly what the evidence in this**  
**9 case has proven.**

**10 We have proven that the defendant committed those three**  
**11 offenses as charged in the superseding indictment. We proved it**  
**12 through eyewitness testimony, from police officers who testified**  
**13 that they observed the defendant as the only occupant of a Chevy**  
**14 Impala. They pulled in behind the car as it pulled into a**  
**15 driveway, eventually searched the car, and found the defendant**  
**16 as the only occupant in possession of both the gun and crack**  
**17 cocaine.**

**18 We also proved it through stipulations that the parties**  
**19 reached. There was a stipulation regarding the testing of**  
**20 Government's Exhibit 7, the crack cocaine, that one of the bags**  
**21 was tested of the eight bags, it weighed 1.2 grams, and that it**  
**22 was crack cocaine.**

**23 We proved it through other stipulations, that the**  
**24 firearm, Government's Exhibit 6, that that had previously**  
**25 traveled in interstate commerce prior to the defendant**

**Pedersen - Opening Argument**

1     possessing it on July 6th of 2001. We also proved it through a  
2     stipulation that the defendant prior to July 6th of 2011 was a  
3     convicted felon.

4             We put on expert testimony. You heard the testimony of  
5     Detective Reffett, who testified regarding his opinion regarding  
6     whether the amount of cocaine, given all the other evidence in  
7     this case, was consistent with an individual possessing it, that  
8     individual being the defendant, with the intent to distribute  
9     it. He also told you in his expert opinion how drug dealers  
10    typically use guns to protect their drugs and their profits.

11            You also heard testimony from Tracy Runyard, the nurse  
12    that conducted the intake of the defendant. How the defendant  
13    told her at the time he was arrested that he was not using  
14    drugs. She also told you that the defendant told her that he  
15    was using Norco and that if he had been taking that medication  
16    and used cocaine, that could cause a severe interaction and  
17    heart problems and that the defendant, when she interviewed him  
18    reported no heart problems that he was experiencing.

19            The evidence in this case points to one and only one  
20    set of verdicts, and those are verdicts of guilty on all three  
21    counts.

22            I'd like to talk to you for a few minutes about some of  
23    the instructions that I expect you will receive in this case.  
24    One of the instructions that you'll hear is an instruction  
25    regarding the difference between direct evidence and

**Pedersen - Opening Argument**

1       circumstantial evidence, and you'll be told, I believe, that  
2       there is no difference in the weight that you must give either  
3       of those two types of evidence. Both are good types of evidence  
4       for you to consider.

5               Well, what's the difference between direct evidence and  
6       circumstantial evidence. Well, consider you're walking or you  
7       get off a subway car -- or I'm sorry -- you're riding on a  
8       subway. You see someone get on the subway. And you see that  
9       they're all wet. Well, you weren't outside, but I think you can  
10      figure out that it was probably raining outside based on other  
11      facts that you've observed. That's basically what  
12      circumstantial evidence is.

13             Direct evidence is evidence from a witness that  
14      actually saw something happen. What was an example of direct  
15      evidence that we had in this case? The police officers who  
16      testified that they saw defendant in the car, that they observed  
17      a gun on the floor, those types of things. That's direct  
18      evidence.

19             What's circumstantial evidence -- an example of  
20      circumstantial evidence that you've heard in this case? One of  
21      the examples of circumstantial evidence that you heard in this  
22      case was what I just explained about the testimony from Nurse  
23      Runyard. She testified that when doctors prescribe drugs such  
24      as Norco, the pain medication, they explain the interactions  
25      that are possible if you take other drugs while you're taking

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1     **it. So, you can infer from that testimony reasonably that if a**  
2     **doctor prescribed the defendant that medication, he explained to**  
3     **him that certain drugs would have negative interaction. That's**  
4     **the type of circumstantial evidence that you can consider in**  
5     **this case.**

6             **Now, when you were chosen as jurors, that took a long**  
7     **time. There were a lot of questions that you were asked. One**  
8     **question that you were not asked or one thing you were told not**  
9     **to do was when you came into this courtroom and when you go back**  
10    **to the jury room was to leave your common sense outside. You**  
11    **take it back there with you, and you use it when you evaluate**  
12    **the testimony and the evidence you heard in this case.**

13            **Now, I anticipate when the defendant's attorney**  
14    **addresses you, he will ask you to consider things that you**  
15    **didn't hear, like, for instance, with the cell phone. Well, you**  
16    **didn't hear about any DNA evidence from the cell phone or any**  
17    **fingerprints from the cell phone. But I anticipate he's not**  
18    **going to discuss the fact that you have other evidence that you**  
19    **did hear regarding who possessed the cell phone, direct evidence**  
20    **from Officer Dodd, who testified that he pulled the cell phone**  
21    **out of the defendant's pocket.**

22            **So, we ask you to use your common sense when you're**  
23    **listening to the arguments and evaluating the evidence in this**  
24    **case.**

25            **I want to talk to you about some of the other**

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1 instructions that you will receive. One of those instructions  
2 that you will receive explains to you what the definition of  
3 knowledge is. And, basically, knowledge is a person acts  
4 knowingly if he realizes what he's doing and is aware of the  
5 nature of his conduct and does not act through ignorance,  
6 mistake, or accident. In deciding whether the defendant acted  
7 knowingly, you may consider all of the evidence, including what  
8 the defendant did or said.

9 That means you can conclude that this defendant  
10 possessed a gun in the car based on things that he did, like  
11 trying to get out of the car when the officers were ordering him  
12 to stay in the car or telling the officers, "I'm just trying to  
13 go into my house," when he didn't live there. Those are things  
14 that -- that was something that he said or did.

15 So, those are the two examples of things that the  
16 defendant did and said that show you his knowledge. We don't  
17 have to have -- we don't have to be inside the defendant's head,  
18 per se. You can look at what he said and what he did to  
19 conclude whether or not he knew the gun was in the car and  
20 knowingly possessed it.

21 As far as what possession means, that doesn't mean that  
22 you have to own it. A person possesses an object if he has the  
23 ability and intention to exercise direction and control over the  
24 object, either directly or through others. A person may possess  
25 an object even if he is not in physical contact with it and even

**Pedersen - Opening Argument**

1 if he does not own it. So, the fact that the gun was found on  
2 the floor of the car doesn't mean he wasn't in possession of it  
3 at the time the officers stopped the car. He was exercising  
4 control, and he could exercise direction over that object, the  
5 gun, during the time that the officers observed him. Same thing  
6 with the crack cocaine that was in the console of the car.

7 Now, in order to prove the first charge, possession of  
8 cocaine base with the intent to distribute, there's certain  
9 things that the government must prove. First, we must prove  
10 that he knowingly possessed cocaine base. Well, that's what I  
11 just talked about. The knowingly and the possession.

12 Second, we have to prove that the defendant intended to  
13 distribute the substance to another person. We presented  
14 evidence of that. You heard the testimony of Detective Reffett,  
15 the text messages regarding the defendant conducting  
16 transactions involving drugs.

17 The next thing we have to prove is that the defendant  
18 knew the substance was some kind of controlled substance. And  
19 we're not required to prove that the defendant specifically knew  
20 that the substance was cocaine base.

21 What does distribute mean? That simply means  
22 delivering or transferring possession of the substance to  
23 someone else or causing someone else to do that. So, if he  
24 possessed it with intent to distribute, he was possessing it  
25 with the intent to give it to someone else. That's what the

**Pedersen - Opening Argument**

1 government must prove. Well, what evidence did we present  
2 regarding the intent to distribute.

3 First of all, Government's Exhibit 7, the baggies  
4 containing the crack cocaine. There were eight individually  
5 wrapped packages. And you heard the testimony from Detective  
6 Reffett that based on his training and experience and his  
7 conversations with thousands of people who either distribute  
8 drugs or use drugs, in his opinion this packaging was consistent  
9 with possession with intent to distribute.

10 He further testified and you heard evidence that there  
11 was no -- the car was searched, and the defendant's person was  
12 searched, and there was nothing that the defendant had that he  
13 could have used to ingest drugs.

14 Further, the defendant was in possession of a cell  
15 phone. Officer Dodd took it out of his pocket. That cell phone  
16 was searched, and certain text messages were extracted,  
17 specifically a string of text messages the day before the  
18 defendant was arrested.

19 Now, those messages started early in the morning on  
20 July 5th of 2011, and there were several discussions during that  
21 time between the defendant and the same individual at the phone  
22 number (XXX) XXX-XXXX. And you'll get a copy of these text  
23 messages when you're deliberating back in the jury room But as  
24 Detective Reffett testified, these conversations involved  
25 negotiations regarding the price, whether or not the defendant

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1 would front the drugs to the individual that he was selling them  
2 to, meaning give them to him on credit, take them now and pay me  
3 later. And eventually at the end of the day, the defendant  
4 received a message back from that same customer saying, "That  
5 was some good shit," meaning those were some good drugs. That's  
6 the evidence that you can consider regarding the defendant's  
7 possession of Government's Exhibit 7 with the intent to  
8 distribute.

9 What other evidence do we have to show it's possession  
10 with intent to distribute? He had cash on his person, \$260.  
11 The jail intake form that I've talked about already, he told the  
12 nurse he did not use drugs. She asked him about prescriptions.  
13 He explained that. And when he was asked the second question do  
14 you use drugs, he said no. He also was taking that pain  
15 medication that would have caused a severe interaction if he  
16 used cocaine.

17 And as Detective Reffett testified, there was also a  
18 gun present, which is common with individuals who traffic drugs  
19 to protect their drugs and their profits. And that firearm was  
20 loaded.

21 Based on the evidence you've heard, we have proven  
22 beyond a reasonable doubt that the defendant committed the  
23 offense as charged in Count 1 of the superseding indictment.

24 On Count 2 the government must prove -- that's the  
25 count regarding possession of a firearm by a felon. The

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1 government must prove certain things. First, that the defendant  
2 knowingly possessed the firearm that at the time that he  
3 possessed the firearm he had been convicted by a crime  
4 punishable by a term of imprisonment exceeding one year. Now,  
5 the defendant has stipulated to that. There's no argument about  
6 that.

7 And that the possession was in or affecting commerce or  
8 the firearm had been shipped or transported in interstate or  
9 foreign commerce. Again, there was a stipulation that the  
10 firearm had previously been transported in interstate commerce.  
11 But just so we understand interstate commerce, as I said, there  
12 was a stipulation, but we don't have to prove how the firearm  
13 traveled in interstate commerce, that the firearm's travel was  
14 related to the defendant's possession of it, that he went  
15 somewhere else and brought it back to this state, we don't have  
16 to prove that, or that the defendant even knew before he  
17 possessed it that it had traveled in interstate commerce. So,  
18 we've met that burden regarding interstate commerce through the  
19 stipulation.

20 How did the defendant knowingly possess the firearm?  
21 Well, as I said earlier, he pulled into a driveway after the  
22 unmarked car pulled in behind him. He immediately made an  
23 unsignaled turn into that driveway. The officers pulled in,  
24 turned their lights on. He didn't live at that address. Why  
25 did he pull in there. Because he knew he had a gun, and he was

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1 hoping maybe the police would drive by. He lied to the  
2 detectives when he stated he lived there. Why do that if you  
3 weren't in possession of a firearm and you were a convicted  
4 felon.

5 Both Detectives Nordberg and Pruitt saw the defendant  
6 reaching under the driver's seat as they approached. That's  
7 exactly where the gun was found. Government's Exhibit 12. That  
8 shows where the firearm was before it was moved. That's where  
9 the detectives first observed it when they looked in the  
10 vehicle. So, if the defendant was the only occupant, the driver  
11 of that vehicle, he had to have seen it while he was in the car.  
12 That's knowing possession.

13 He also did other things inconsistent with someone that  
14 was not in possession of a firearm and consistent with someone  
15 who possessed that gun. He tried to distance himself by  
16 disobeying the order of the police officer when he told him to  
17 stay in the car. He got out. He refused to provide the keys  
18 after he was handcuffed. Why? Because he knew the gun was in  
19 the car, and he was hoping they wouldn't be able to get in  
20 there.

21 So, all those facts point to one and only one  
22 conclusion, that the defendant possessed the gun, Government's  
23 Exhibit 6, on July 6th of 2011, and when he possessed that gun,  
24 the evidence also shows that the defendant did so in furtherance  
25 of a drug trafficking crime, that crime that we charged in

**Pedersen - Opening Argument**

1       **Count 1, possession of crack cocaine with the intent to**  
2       **distribute.**

3               **In order to prove that charge, we have to prove that**  
4       **the defendant knowingly possessed a firearm in furtherance of**  
5       **that crime, possession of cocaine base with the intent to**  
6       **distribute. How do we prove that? Well, to prove in**  
7       **furtherance of drug trafficking, we have to prove that the**  
8       **possession of the gun furthers, advances, moves forward,**  
9       **promotes, facilitates a drug trafficking crime. What does that**  
10       **mean. Well, there's some factors that you can consider in**  
11       **deciding whether or not the defendant's possession furthered his**  
12       **drug trafficking crime.**

13               **One of the things is whether or not the defendant was**  
14       **protecting his drugs or drug money from robbery in furtherance**  
15       **of drug -- that equals in furtherance of drug trafficking. As**  
16       **Detective Reffett testified, that's consistent with his**  
17       **experience that individuals who possess controlled substances**  
18       **and money that they make from selling controlled substances need**  
19       **protection because they're frequently robbed, and they can't**  
20       **report those robberies because they'd have to tell the police**  
21       **that they were committing illegal activities.**

22               **Some of the factors that you can consider in deciding**  
23       **whether or not the defendant possessed that firearm in**  
24       **furtherance of his drug trafficking activity -- and I'm going to**  
25       **go through some of these factors, but I just want to let you**

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1 know that none of these factors in and of themselves are  
2 dispositive, and you can decide what weight to give the factors.  
3 But I will submit that when you look at all those factors that  
4 the only conclusion you can reach is that the defendant  
5 possessed that gun in furtherance of his drug trafficking  
6 crimes.

7 The first factor you can consider is the type of drug  
8 activity. The accessibility of the firearm is the second  
9 factor. Next, the type of weapon. Whether the defendant's  
10 possession of the firearm was legitimate. Whether the gun was  
11 loaded. The proximity of the gun to the drugs or profits. And  
12 the time and circumstances where the gun was found. I'm going  
13 to go through each one of those briefly.

14 First, the type of drug activity. It was possession of  
15 crack cocaine with the intent to distribute it. He possessed  
16 both the gun, Government's Exhibit 6, and the crack cocaine. In  
17 this vehicle the drugs were in the console, and the gun was just  
18 on the floor below.

19 The text messages. Again, they demonstrate that the  
20 defendant was engaged in drug trafficking activity. He was  
21 making money. He needed to protect his drugs and his money with  
22 the gun.

23 The accessibility of the firearm As I indicated, the  
24 firearm was directly underneath the driver's seat in the same  
25 spot where the officers testified that they saw the defendant

**Pedersen - Opening Argument**

1 reaching when they approached the car. Readily accessible to  
2 the defendant.

3 What type of weapon. An automatic firearm at his  
4 fingertips. Whether the defendant's possession was legitimate.  
5 Well, it wasn't. He was a convicted felon at the time, and he's  
6 prohibited from possessing firearms. That factor weighs in  
7 favor of finding that the defendant possessed it in furtherance  
8 of his drug trafficking crime.

9 Whether it was loaded. We know the gun was loaded, as  
10 well.

11 The proximity to the drugs or profits. There's some  
12 blurriness on Government's Exhibit -- I believe this is  
13 Government's Exhibit 15, but you can see where the console is,  
14 and you can see the green towel below. The console with the pop  
15 bottle, that's where the drugs were found. The gun directly on  
16 the floor below.

17 The time and circumstances where the gun was found.  
18 The defendant was found with the drugs and the gun at the same  
19 time while he was attempting to evade the police when they  
20 ordered him to stay in his car.

21 Also, those text messages the very day before he was  
22 arrested, his customer replying back that the drugs he gave him  
23 were good.

24 All of these facts point to one and only one  
25 conclusion, that the defendant in this case, Dayton Poke, on

**Caver - Closing Argument**

1     **July 6th of 2011, committed three crimes. One, he possessed**  
2     **crack cocaine with the intent to distribute it. Two, he**  
3     **possessed a firearm as a convicted felon. And three, he**  
4     **possessed that firearm in furtherance of a drug trafficking**  
5     **crime that we've charged in Count 1 of the superseding**  
6     **indictment. We ask you to return the only verdicts in this case**  
7     **that the evidence demands, and those are verdicts of guilty on**  
8     **all three counts.**

9             **THE COURT: Mr. Caver.**

10            **CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT**

11           **MR. CAVER: As we told you in opening statements, the**  
12     **government bears the burden of proof to show beyond a reasonable**  
13     **doubt that Dayton Poke committed any crime that day. What the**  
14     **government showed you in the jury instructions, as you will be**  
15     **read in the jury instructions, is that you have to find that**  
16     **Dayton Poke knowingly possessed a firearm**

17           **The government showed you through witness testimony**  
18     **that there was a gun located in the car. The government never**  
19     **showed you one piece of evidence to suggest that Mr. Poke ever**  
20     **knew that that gun was present in that car.**

21           **Furthermore, the witnesses that the government did**  
22     **present, who explained to you why there would not be any**  
23     **fingerprints located and why it wasn't an important enough case**  
24     **in order to send DNA testing out, also never wrapped up how they**  
25     **can show that Dayton Poke ever knew that gun was present in the**

**Caver - Closing Argument**

1 car.

2 Mr. Poke takes responsibility for using drugs and being  
3 a drug addict. The drugs were not the question on that date.  
4 He was not selling drugs.

5 The government also showed you text messages. They  
6 paraded them on the TV screen here just before you moments ago.  
7 Again, what the government didn't do and where there is  
8 reasonable doubt is the fact that Mr. Poke was never tied to any  
9 one of those text messages. Mr. Poke, other than having the  
10 phone, whether -- we're not sure whether it was on his person or  
11 whether it was as was stated in the probable cause statement,  
12 that it was on the floorboard of the car, we don't even know  
13 whether Dayton Poke was the user of that phone at the time those  
14 text messages were ever sent.

15 Reasonable doubt, ladies and gentlemen. The government  
16 has failed to meet its burden of proof that Mr. Poke knew that  
17 that gun was in the car or that he was the sender or recipient  
18 of any one of those text messages. Reasonable doubt.

19 We heard from Detective Pruitt that based on what he  
20 saw, he saw all of this happen in a very short period of time.  
21 From the time that he got out of his squad car and he walked up  
22 to Mr. Poke's car, that Mr. Poke was magically with one hand  
23 rolling up the window as he was reaching down beneath the seat  
24 fiddling with something underneath the seat. Even Detective  
25 Pruitt didn't tell you that he saw Mr. Poke doing anything with

**Caver - Closing Argument**

1     any gun or that he knew that there was anything that Detective  
2     Pruitt observed to suggest that Mr. Poke knew that a gun was in  
3     that car.

4             You heard from Detective Nordberg that his memory was  
5     better today after getting his story straight by reading the  
6     reports of the other detectives and officers, and it was better  
7     today than it was during his testimony under oath back in  
8     August. Which story is it?

9             Officer Dodd told you that the cell phone was an  
10    important piece of evidence, and that's why he didn't write a  
11    report on it, yet the government seems to maintain that  
12    possession of the cell phone was a linchpin of their case to  
13    show that this is a drug trafficking crime. But it wasn't  
14    important enough for Officer Dodd to even so much as write a  
15    report to clear up any inconsistency of where this phone was  
16    found. Was it found in the car? Was it found on Mr. Poke? In  
17    any case, we haven't established that Mr. Poke was the user of  
18    that phone at any time any of those messages were sent.

19            Detective Cone told you people don't typically handle  
20    guns by the barrel. As you've seen over and over again in the  
21    photographs, the gun was sticking out from underneath the seat  
22    by the barrel. Detective Cone explained ad nauseam that gun  
23    possession is typically -- guns are typically held by the grip.

24            Detective Voyles told you that fingerprints would have  
25    been easily seen on that cell phone with the flat glass surface

**Caver - Closing Argument**

1       when it was off and when the screen was black. He told you  
2       this. They were visible. And if they were present, he would  
3       have seen them. But yet this phone that we don't know where it  
4       came from, there were no fingerprints that Detective Voyles saw.

5               Mr. Poke is alleged by the government to have had his  
6       hands all over these items, yet not one fingerprint is found,  
7       even, as you will see with the gun, on the smooth part of the  
8       barrel. That was the only part that was sticking out from under  
9       the seat. It's almost just like they vanished. How did that  
10      happen?

11             Detective Reffett told you that there is no way -- he  
12      confirmed that there was no way to determine who sent or who saw  
13      those text messages because there's no way to track exactly who  
14      sees the cell phone at the time that it's being operated or who  
15      sends the message. And Detective Voyles testified that there  
16      was no security on the phone when he used it and when he  
17      connected it to his computer system to download the information.

18             Detective Stevens. He told you that his story at the  
19      motion to quash and suppress was incorrect, and he wants you to  
20      believe that he was telling the truth today, that he was the one  
21      that wrote the probable cause statement. Ladies and gentlemen,  
22      there's some pretty glaring inconsistencies here between the  
23      written reports and what happened in this case. Officer Dodd is  
24      saying that he got this phone from the person of Mr. Poke,  
25      whereas the probable cause statement is saying that it was found

**Caver - Closing Argument**

1 on the floorboard of the car. Detective Stevens acknowledged  
2 today that he made an assumption, and he wrote an assumption in  
3 an official report. The only way that he had to believe that  
4 that phone was found in the car was based on an assumption.  
5 Well, is that really true? There's no DNA. There are no  
6 fingerprints. We have a discrepancy as to where the cell phone  
7 came from

8 Mr. Poke is a drug addict and has used drugs at least  
9 one time since March 31st of 2010. Possession of the gun has to  
10 be knowing. It's not enough for the gun just to be present in  
11 the car. The government has to show you that Mr. Poke knew that  
12 that gun was there, that he intended to distribute the cocaine.

13 Again, ladies and gentlemen, when Mr. Poke was found in  
14 the vehicle, he got out, and there were drugs in the car, which  
15 he takes responsibility for. At no time did the government ever  
16 show you that Mr. Poke intended to distribute those or any other  
17 drugs. The closest they get and the best that they get is the  
18 testimony from Detective Reffett that that's typically what  
19 happens.

20 Ladies and gentlemen, reasonable doubt. It's not  
21 enough to just say, well, that's what typical drug dealers do.  
22 The government has not shown you in this case that he intended  
23 to distribute any of those drugs. The government has not shown  
24 you any reason, other than personal use, that Mr. Poke had those  
25 drugs in the car that day.

**Caver - Closing Argument**

1           The government says as part of their argument to  
2 corroborate the detective's story that there was no pipe found  
3 with the drugs. So, that indicates that he wasn't intending to  
4 use it. But, ladies and gentlemen, reasonable doubt.

5           Mr. Poke wasn't committing any crime that day when he  
6 was driving down the street. The government argues that it was  
7 a failure to use a turn signal that even led the police to pull  
8 him over. He wasn't using drugs on that day, but that does not  
9 sustain the government's burden to prove to you beyond a  
10 reasonable doubt that the drugs were present in that car for any  
11 other reason than Mr. Poke was a drug addict.

12           Ladies and gentlemen, because the government has failed  
13 to show you the knowledge requirement to show that that gun was  
14 present in this car, I ask that you return verdicts of not  
15 guilty on each and every count in the indictment.

**FINAL ARGUMENT ON BEHALF OF THE GOVERNMENT**

16           MR. KARNER: Ladies and gentlemen, a famous American  
17 once said that to commit a crime -- when you commit a crime, the  
18 earth is made of glass. There is no such thing as concealment.

19           On July 6th, 2011, try as he might, this defendant was  
20 unable to conceal the evidence of his crimes from two diligent,  
21 ethical Rockford police officers who had focused their attention  
22 on him. By possessing that handgun as a convicted felon, along  
23 with the crack cocaine in the center console of his car, he  
24 committed the crimes of possessing with intent to distribute  
25

**Karner - Final Argument**

1 cocaine base, possession of a firearm as a felon, and possession  
2 of a firearm in furtherance of a drug trafficking crime.

3 Let's talk about knowing possession. The evidence in  
4 this case showed that this convicted felon, within inches of him  
5 in a car that he occupied and occupied alone, had that loaded  
6 handgun underneath the seat of his car. Now, is this convicted  
7 felon going to tell you what is on his mind, or is there direct  
8 evidence of what is on his mind? No. The circumstances in this  
9 case are what reveal what is in his mind.

10 The evidence, the circumstantial evidence, which  
11 Mr. Pedersen read to you earlier, is considered under the law  
12 equally with direct evidence. The circumstances under which he  
13 behaved and conducted himself reveal what he knows or what he  
14 knew about that handgun. And under the stress of the moment,  
15 being followed by a squad car, he signaled a turn without -- or  
16 he made a turn without signaling it. And then what did he do?  
17 He reached underneath -- or he reached with his right hand in  
18 the area of where the handgun was found later to be protruding  
19 from underneath the seat of the car.

20 At the same time, he's quickly rolling up the driver's  
21 side window of the car at a time when he should be rolling down  
22 the window. I mean, the police officers had activated their  
23 lights by this time. He knew he was going to be contacted by  
24 the police. Why is he rolling up the window? Why is he getting  
25 out of the car when the police officer is telling him to stay in

**Karner - Final Argument**

1 the car for his safety? The defendant disregarded those  
2 instructions, got out of the car with the closed window, and  
3 attempted to lock the door, and then wouldn't agree to be  
4 handcuffed and wouldn't give up the keys to the car. Think  
5 about that. Why is he doing his level best to put distance  
6 between him and the car? It's not because of the cocaine in the  
7 center console. The lid of that console concealed the drugs.  
8 If he had just played it cool and stayed in the car, did as he  
9 was told, worst case scenario he comes away with a traffic  
10 ticket for not signaling the turn. Best case scenario is he's  
11 given a warning, and he goes on his way.

12 Why was it so important for that man to put distance  
13 between himself and the car? Why was it so important to the  
14 defendant for those police officers not to look or get access to  
15 the interior of the car? Because, ladies and gentlemen,  
16 Government's Exhibit 12 shows that he was concerned they were  
17 going to see the handgun, as they did, because that handgun was  
18 partially sticking out from the driver's seat. And we know  
19 Detective Pruitt saw it because as soon as he did, he called out  
20 that alarm, that code 1032. The only reason the defendant went  
21 to such great lengths to put distance between himself and the  
22 car is because he knew that handgun was there.

23 Then we hear this business about, well, he didn't  
24 intend to distribute the cocaine that was found in the car. He  
25 was just a personal user. Well, there's problems with that,

**Karner - Final Argument**

1 too. You have the packaging and the weight. You have eight  
2 packets. The contents of one packet was tested, 1.2 grams of  
3 just the one packet.

4 And Detective Reffett testified. He's been doing this  
5 a long time, and he has a lot of experience, and he told you  
6 that the amount and the way that amount was divided up was  
7 consistent with an intent to distribute. Factor into that  
8 equation the presence of the firearm, one of the tools of the  
9 drug dealer's trade. Consistent with an intent to distribute.  
10 Because in his business, you can't call the police when you're  
11 targeted for a robbery. You got to handle business on your own,  
12 and the way to handle that business is with a firearm

13 You've got a man with a gun, eight packets of crack  
14 cocaine, and on top of that he's got \$260. Now, I understand.  
15 That doesn't qualify him as an upper income earner. But \$260,  
16 combined with the gun and the crack cocaine the way it was  
17 packaged, consistent with an intent to distribute.

18 And then we have the cell phone. That's the way that  
19 deals are arranged, plans are made to distribute crack cocaine  
20 in the crack business. And we know that was used here. I'll  
21 get into the text messages in a minute.

22 And then the last thing we have is if he was going to  
23 use that cocaine on that day, how was he going to get it into  
24 his body? There was no pipe there. There's no evidence of  
25 pipes. What was he going to do? How was he going to get that

**Karner - Final Argument**

1 chunky material into his body if he was going to use it? There  
2 was no user materials to be found in that car. How was he going  
3 to do that?

4 We hear about the phone. And, yeah, there were no  
5 fingerprints on it. That's true. We're going to go into what  
6 you heard about fingerprints and what you didn't hear about  
7 fingerprints. But the uncontradicted testimony is this, that  
8 the phone was recovered by Officer Dodd from the pocket of the  
9 defendant.

10 Now, how does that phone get into the defendant's  
11 pocket if it was -- it had to have been touched. Presumably  
12 he's the one who put it in his pocket. But if you need more, in  
13 the texts on Page 197 of Government's Exhibit 21, the sender of  
14 a text message texts the message, "Who is this," and the  
15 possessor of that phone, the phone that was in the defendant's  
16 pocket, says, "Daylow." And what do we know about the  
17 defendant's nickname? Daylow.

18 So, you have the phone, the money, and then not only  
19 the drugs, the firearm you've got the text messages. And go  
20 through them. Don't take our word for it. If you go through  
21 those text messages, it's clear that the person who possessed  
22 the defendant's phone, which is by reasonable inference the  
23 defendant, was negotiating the sale of crack cocaine. He didn't  
24 have any other type of drug on him. He had crack cocaine. And  
25 it was just the day before. And it was \$20 is the price he

**Karner - Final Argument**

1        quotes, which is the price of two-tenths of a gram of crack  
2        cocaine. And it was a customer who was complimenting him on the  
3        quality of drugs previously sold. Read through these text  
4        messages, and it's clear. The only inference that he can be  
5        drawn is that the defendant intended to distribute that cocaine,  
6        that crack cocaine.

7                Now, we also have the defendant's admission on the day  
8        of his arrest to Tracy Runyard that he didn't use drugs. Now,  
9        they say, well, but we've got some records. We've got him  
10       self-reporting nine days after his arrest the defendant's own  
11       self-serving statement, yeah, I used drugs on July 6th. Well,  
12       that's nine days after his arrest, nine days after he learns  
13       that he's been arrested and what he's being charged with, and  
14       he's in defense mode.

15               And as we heard from Detective Reffett, how do people  
16       charged with intent to distribute often defend themselves? By  
17       claiming personal use. That's nine days after his arrest. Did  
18       he use cocaine in 2010 at some point pursuant to that  
19       stipulation? Sure. Sure. It was in his blood. Has the  
20       defendant used cocaine in the past? I guess so. But the bottom  
21       line is this. The evidence shows that the drugs, the crack  
22       cocaine that he was found with on July 6th, are drugs that he  
23       intended to distribute because he had no way of ingesting them  
24       and his phone shows that's the business he was engaged in.

25               Let's talk about Detective Pruitt and some of the

**Karner - Final Argument**

1 things that were said about police officers here. You know, I  
2 started out with a quote about the world being made of glass and  
3 how there's no concealment. Well, using that metaphor, you  
4 shouldn't also throw stones, either, if you're a defendant in  
5 this case because some things were said in opening statement  
6 that weren't proven. And opening statements are not evidence.  
7 You met Detective Pruitt this afternoon.

8 One of the things the defense lawyer said -- and,  
9 please, don't take any of my comments as a criticism to him  
10 He's an honorable attorney, and he's representing his client.  
11 And I don't mean to attack him in any way, shape, or form But  
12 he made some mistakes here. He said in opening statement that  
13 Detective Pruitt, you were going to hear some sinister things  
14 about him And that's a very serious matter to accuse a person  
15 of something and then not back it up.

16 Well, Detective Pruitt came in here today, held his  
17 head up high, and he told you what he saw and what he did. He  
18 told you about seeing the Impala not signal a turn. He told you  
19 about going up to the driver's side of that car and seeing the  
20 defendant reach over with his right side as if to place  
21 something underneath the driver's seat. And he also told you  
22 about seeing the driver's side window roll up. That part,  
23 except for the window, which Nordberg couldn't see, was  
24 corroborated by Detective Nordberg. And Detective Pruitt was  
25 never impeached with that. And all these things we heard about,

**Karner - Final Argument**

1     **some misconduct, there is no evidence of that. He was never**  
2     **impeached with that. That doesn't exist in this trial. And**  
3     **Detective Pruitt was called by the defense in this case.**

4             **Now, we hear about Detective Stevens. Did he make a**  
5     **report -- did he make a mistake, draw an improper assumption in**  
6     **a PC statement? Sure. But so what. That doesn't mean the**  
7     **defendant didn't possess a gun here. It didn't mean the crack**  
8     **cocaine wasn't possessed or wasn't possessed with the intent to**  
9     **distribute. It was a mistake, just like the defense lawyer made**  
10    **in his opening statement. People make mistakes. It doesn't**  
11    **mean they're lying to you. It doesn't mean they're bad**  
12    **character. People make mistakes.**

13            **The defense lawyer told you in his opening statement**  
14    **you're not going to hear anything about fingerprints. Well,**  
15    **yeah, you did. You heard about the science of fingerprints.**  
16    **And contrary to what TV tells us, fingerprints aren't always**  
17    **found on objects touched. There are a lot of variables involved**  
18    **in determining whether a crime scene detective can recover**  
19    **prints suitable for comparison. The attempt was made on the**  
20    **gun, and it was unsuccessful, through no fault of anyone's. The**  
21    **attempt wasn't made on the phone because it's an obvious point.**  
22    **The phone was found in his pocket with text messages identifying**  
23    **the possessor of the phone by the same nickname as the**  
24    **defendant's. There was no need to fingerprint the phone here.**

25            **And then there's DNA. Was the handle swabbed for DNA?**

**Karner - Final Argument**

1     **Yes. The Illinois State Crime Lab you heard has a policy that**  
2     **prohibits or forbids the testing of DNA in cases like this. But**  
3     **you also heard -- and let me just stop right here and tell you**  
4     **this. The government here has the burden of proving all of the**  
5     **elements of the offense beyond a reasonable doubt, and that's**  
6     **the way it should be, and that's the Constitution. It's the**  
7     **cornerstone of our government, and by all means you are**  
8     **obligated to hold us to our burden. The defense has no burden**  
9     **of proving or doing anything here. But the defense could have**  
10    **requested DNA testing in this case, and they didn't. And**  
11    **because they could have and didn't, you can't draw an inference**  
12    **either way about why DNA testing wasn't done here. It wasn't**  
13    **done here? It wasn't done here. You can't draw an inference**  
14    **either way.**

15           **It's been a long day, ladies and gentlemen. I'm going**  
16    **to sit down. And we've noticed that you've paid attention to us**  
17    **throughout the course of these proceedings. You've given both**  
18    **parties a fair day in court. I'm sure you're going to hold us**  
19    **to our burden of proof, as you should. We've met that burden of**  
20    **proof, folks. The evidence in this case, the evidence that we**  
21    **brought you, proved beyond a reasonable doubt that the defendant**  
22    **is guilty of all three charges in the superseding bill of**  
23    **indictment.**

24           **THE COURT: Folks, you will each receive a copy of the**  
25    **jury instructions, and you may read them along with me.**

**Charge**

1           **Members of the jury, I will now instruct you on the law**  
2           **that you must follow in deciding this case. I will also give**  
3           **each of you a copy of these instructions to use in the jury**  
4           **room. You must follow all of my instructions about the law,**  
5           **even if you disagree with them. This includes the instructions**  
6           **I gave you before the trial, any instructions I gave you during**  
7           **the trial, and the instructions I am giving you now.**

8           **As jurors, you have two duties. Your first duty is to**  
9           **decide the facts from the evidence that you saw and heard here**  
10          **in court. This is your job, not my job or anyone else's job.**  
11          **Your second duty is to take the law as I give it to you, apply**  
12          **it to the facts, and decide if the government has proved the**  
13          **defendant guilty beyond a reasonable doubt.**

14          **You must perform these duties fairly and impartially.**  
15          **Do not let sympathy, prejudice, fear, or public opinion**  
16          **influence you. In addition, do not let any person's race,**  
17          **color, religion, national ancestry, or gender influence you.**

18          **You must not take anything I said or did during the**  
19          **trial as indicating that I have an opinion about the evidence or**  
20          **about what I think your verdict should be.**

21          **The charges against the defendant are in a document**  
22          **called a superseding indictment. You will have a copy of the**  
23          **superseding indictment during your deliberations. The**  
24          **superseding indictment in this case charges that the defendant**  
25          **committed the crimes of possessing with intent to distribute**

**Charge**

1 cocaine base, possessing a firearm as a felon, and possessing a  
2 firearm in furtherance of a drug trafficking crime. The  
3 defendant has pled not guilty to the charges.

4 The superseding indictment is simply the formal way of  
5 telling the defendant what crimes he's accused of committing.  
6 It is not evidence that the defendant is guilty. It does not  
7 even raise a suspicion of guilt.

8 The defendant is presumed innocent of each and every  
9 one of the charges. This presumption continues throughout the  
10 case, including your deliberations, and is not overcome unless  
11 from all the evidence in the case you are convinced beyond a  
12 reasonable doubt that the defendant is guilty as charged.

13 The government has the burden of proving the  
14 defendant's guilt beyond a reasonable doubt. This burden of  
15 proof stays with the government throughout the case. The  
16 defendant is never required to prove his innocence. He is not  
17 required to produce any evidence at all.

18 You must make your decision based only on the evidence  
19 that you saw and heard here in court. Do not consider anything  
20 you may have seen or heard outside of court, including anything  
21 from the newspaper, television, radio, the Internet, or any  
22 other source. The evidence includes only what the witnesses  
23 said when they were testifying under oath and the exhibits that  
24 I allowed into evidence and the stipulations that the lawyers  
25 agreed to. A stipulation is an agreement that certain facts are

**Charge**

1 true or that a witness would have given certain testimony.

2 Nothing else is evidence.

3 The lawyers' statements and arguments are not evidence.  
4 If what a lawyer said is different from the evidence as you  
5 remember it, the evidence is what counts. The lawyers'  
6 questions and objections, likewise, are not evidence. A lawyer  
7 has a duty to object if he thinks a question is improper. If I  
8 sustained objections to questions the lawyers have asked, you  
9 must not speculate on what the answers might have been. If  
10 during the trial I struck testimony or exhibits from the record  
11 or told you to disregard something, you must not consider it.

12 Give the evidence whatever weight you decide it  
13 deserves. Use your common sense in weighing the evidence and  
14 consider the evidence in light of your own everyday experience.

15 People sometimes look at one fact and conclude from it  
16 that another fact exists. This is called an inference. You are  
17 allowed to make reasonable inferences, so long as they are based  
18 on the evidence.

19 You may have heard the terms direct evidence and  
20 circumstantial evidence. Direct evidence is evidence that  
21 directly proves a fact. Circumstantial evidence is evidence  
22 that indirectly proves a fact. You are to consider both direct  
23 and circumstantial evidence. The law does not say that one is  
24 better than the other. It is up to you to decide how much  
25 weight to give to any evidence, whether direct or

**Charge**

1       **circumstantial.**

2               **Do not make any decision simply by counting the number**  
3       **of witnesses who testified about a certain point. You may find**  
4       **the testimony of one witness or a few witnesses more persuasive**  
5       **than the testimony of a larger number. You need not accept the**  
6       **testimony of the larger number of witnesses. What is important**  
7       **is how truthful and accurate the witnesses were and how much**  
8       **weight you think their testimony deserves.**

9               **A defendant has an absolute right not to testify or**  
10       **present evidence. You may not consider in any way the fact that**  
11       **the defendant did not testify or present evidence. You should**  
12       **not even discuss it in your deliberations.**

13               **Part of your job as jurors is to decide how believable**  
14       **each witness was and how much weight to give each witness'**  
15       **testimony. You may accept all of what a witness says or part of**  
16       **it or none of it. Some factors you may consider include the age**  
17       **of the witness, the intelligence of the witness, the witness'**  
18       **ability and opportunity to see, hear, or know the things the**  
19       **witness testified about, the witness' memory, the witness'**  
20       **demeanor, whether the witness had any bias, prejudice, or other**  
21       **reason to lie or slant the testimony, the truthfulness and**  
22       **accuracy of the witness' testimony in light of the other**  
23       **evidence presented, and inconsistent or consistent statements or**  
24       **conduct by the witness.**

25               **You have heard evidence that before the trial a witness**

**Charge**

1     **made a statement that may be inconsistent with his testimony**  
2     **here in court. You may consider an inconsistent statement made**  
3     **before the trial only to help you to decide how believable a**  
4     **witness' testimony was here in court.**

5             **You have heard testimony that the defendant made a**  
6     **statement to a Rockford police officer. You must decide whether**  
7     **the statement -- whether the defendant actually made a statement**  
8     **and, if so, how much weight to give to the statement. In making**  
9     **these decisions, you should consider all of the evidence,**  
10    **including the defendant's personal characteristics and**  
11    **circumstances under which the statement may have been made.**

12            **You have heard witnesses John Richardson, Dave Cone,**  
13    **Robert Reffett, and Sarah Anderson, namely, who gave opinions**  
14    **and testimony about certain subjects. You do not have to accept**  
15    **each witness' opinions. You should judge this witness opinions**  
16    **and testimony the same way you judge the testimony of any other**  
17    **witness. In deciding how much weight to give to these opinions**  
18    **and testimony, you should consider the witness' qualifications**  
19    **and how he or she reached his or her opinions and the factors I**  
20    **have described for determining the believability of testimony.**

21            **If you have taken notes during the trial, you may use**  
22    **them during deliberations to help you remember what happened**  
23    **during the trial. You should use your notes only as aids to**  
24    **your memory. The notes are not evidence. All of you should**  
25    **rely on your own independent recollection of the evidence, and**

**Charge**

1     **you should not be unduly influenced by the notes of other**  
2     **jurors. Notes are not entitled to any more weight than the**  
3     **memory or impressions of each juror.**

4             **In deciding your verdict, you should not consider the**  
5     **possible punishment for the defendant who is on trial. If you**  
6     **decide that the government has proved the defendant guilty**  
7     **beyond a reasonable doubt, then it will be my job to decide on**  
8     **the appropriate punishment.**

9             **A person acts knowingly if he realizes what he is doing**  
10    **and is aware of the nature of his conduct and does not act**  
11    **through ignorance, mistake, or accident. In deciding whether**  
12    **the defendant acted knowingly, you may consider all of the**  
13    **evidence, including what the defendant did or said.**

14            **A person possesses an object if he has the ability and**  
15    **intention to exercise direction or control over the object,**  
16    **either directly or through others. A person may possess an**  
17    **object even if he is not in physical possession or physical**  
18    **contact with it and even if he does not own it.**

19            **Once you are all in the jury room, the first thing you**  
20    **should do is choose a foreperson. The foreperson should see to**  
21    **it that your discussions are carried on in an organized way and**  
22    **that everyone has a fair chance to be heard. You may discuss**  
23    **the case only when all jurors are present.**

24            **Once you start deliberating, do not communicate about**  
25    **the case or your deliberations with anyone except other members**

**Charge**

1 of your jury. You may not communicate with others about the  
2 case or your deliberations by any means. This includes oral or  
3 written communications, as well as any electronic method of  
4 communication, such as a telephone, cell phone, smart phone,  
5 iPhone, BlackBerry, computer, text messaging, instant messaging,  
6 the Internet, chat rooms, blogs, websites, or services like  
7 Facebook, MySpace, LinkedIn, YouTube, Twitter, or any other  
8 method of communication.

9 If you need to communicate with me while you are  
10 deliberating, send a note through the court security officer.  
11 The note should be signed by the foreperson or by one or more  
12 members of the jury. To have a complete record of this trial,  
13 it is important that you do not communicate with me except by a  
14 written note. I may have to talk to the lawyers about your  
15 message. So, it may take some time to get back to you. You may  
16 continue your deliberations while you wait for my answer.

17 Please be advised that transcripts of trial testimony  
18 are not available to you. You must rely on your collective  
19 memory of the testimony.

20 If you send me a message, do not include the breakdown  
21 of any votes you may have conducted. In other words, do not  
22 tell me that you are split six/six or eight/four or whatever  
23 your vote happens to be.

24 Verdict forms have been prepared for you. You will  
25 take these forms with you to the jury room I will read the

**Charge**

1       verdict forms to you. You do not have the verdict forms. The  
2       only set that you'll have is the set that I have in my hand.  
3       The verdict forms read as follows. We, the jury, find the  
4       defendant, Dayton Poke, not guilty of possessing with intent to  
5       distribute cocaine base as charged in Count 1 of the superseding  
6       indictment.

7               The next jury form states: We, the jury, find the  
8       defendant, Dayton Poke, guilty of possessing with intent to  
9       distribute cocaine base as charged in Count 1 of the superseding  
10      indictment.

11             The next verdict form states: We, the jury, find the  
12      defendant, Dayton Poke, not guilty of possessing a firearm as a  
13      felon as charged in Count 2 of the superseding indictment.

14             The fourth verdict forms states: We, the jury, find  
15      the defendant, Dayton Poke, guilty of possessing a firearm as a  
16      felon as charged in Count 2 of the superseding indictment.

17             The next verdict form states: We, the jury, find the  
18      defendant, Dayton Poke, not guilty of possessing a firearm in  
19      furtherance of a drug trafficking crime as charged in Count 3 of  
20      the superseding indictment.

21             The last verdict form says: We, the jury, find the  
22      defendant, Dayton Poke, guilty of possessing a firearm in  
23      furtherance of a drug trafficking crime as charged in Count 3 of  
24      the superseding indictment.

25             When you have reached unanimous agreement, your

**Charge**

1     foreperson will fill in, date, and sign the appropriate verdict  
2     forms. Each of you will sign it. Advise the court security  
3     officer once you have reached a verdict. When you come back to  
4     the courtroom, I will read the verdicts aloud.

5             The verdict must represent the considered judgment of  
6     each juror. Your verdict, whether it is guilty or not guilty,  
7     must be unanimous. You should make every reasonable effort to  
8     reach a verdict. In doing so, you should consult with one  
9     another, express your own views, and listen to your fellow  
10    jurors' opinions. Discuss your differences with an open mind.  
11    Do not hesitate to reexamine your own view and change your  
12    opinion if you come to believe it is wrong, but you should not  
13    surrender your honest beliefs about the weight or effect of  
14    evidence just because of the opinions of your fellow jurors or  
15    just so there can be a unanimous verdict. The twelve of you  
16    should give fair and equal consideration to all the evidence.  
17    You should deliberate with a goal of reaching an agreement that  
18    is consistent with the individual judgment of each juror. You  
19    are impartial judges of the facts. Your sole interest is to  
20    determine whether the government has proved its case beyond a  
21    reasonable doubt.

22            The superseding indictment charges defendant in Count 1  
23    with possession of cocaine base in the form of crack cocaine  
24    with intent to distribute. In order for you to find the  
25    defendant guilty of this charge, the government must prove each

**Charge**

1 of the three following elements beyond a reasonable doubt. One,  
2 the defendant knowingly possessed cocaine base, and, two, the  
3 defendant intended to distribute the substance to another  
4 person, and, three, the defendant knew the substance was some  
5 kind of controlled substance. The government is not required to  
6 prove that the defendant knew the substance was cocaine base.

7 If you find from your consideration of all the evidence  
8 that the government has proved each of these elements beyond a  
9 reasonable doubt as to the charge you are considering, then you  
10 should find the defendant guilty of that charge. If, on the  
11 other hand, you find from your consideration of all the evidence  
12 that the government has failed to prove any one of these  
13 elements beyond a reasonable doubt as to the charge you are  
14 considering, then you should find the defendant not guilty of  
15 that charge.

16 Cocaine base is a controlled substance.

17 The superseding indictment charges the defendant in  
18 Count 2 with possessing a firearm as a felon. In order for you  
19 to find the defendant guilty of this charge, the government must  
20 prove each of the three following elements beyond a reasonable  
21 doubt. One, the defendant knowingly possessed a firearm, and,  
22 two, at the time of the charged act, the defendant had been  
23 convicted of a crime punishable by a term of imprisonment  
24 exceeding one year, and, three, such possession was in or  
25 affecting commerce or the firearm had been shipped or

**Charge**

1 transported in interstate or foreign commerce.

2 If you find from your consideration of all the evidence  
3 that the government has proved each of these elements beyond a  
4 reasonable doubt as to the charge you are considering, then you  
5 should find the defendant guilty of that charge. If, on the  
6 other hand, you find from your consideration of all the evidence  
7 that the government has failed to prove any one of these  
8 elements beyond a reasonable doubt as to the charge you are  
9 considering, then you should find the defendant not guilty of  
10 that charge.

11 In or affecting commerce in interstate or foreign  
12 commerce includes commerce between any place in a state and any  
13 place outside of that state. The terms do not include commerce  
14 between places within the same state, but through any place  
15 outside the state. This requirement is satisfied if the firearm  
16 traveled in interstate or foreign commerce prior to the  
17 defendant's possession of it.

18 A firearm has traveled in interstate or foreign  
19 commerce if it has traveled between one state and any other  
20 state or country or across a state or national boundary line.  
21 The government need not prove how the firearm traveled in  
22 interstate commerce, that the firearm's travel was related to  
23 the defendant's possession of it, or that the defendant knew  
24 that the firearm had traveled in interstate commerce.

25 The superseding indictment charges the defendant in

**Charge**

**Count 3 with possession of a firearm in furtherance of a drug trafficking crime. In order for you to find the defendant guilty of this charge, the government must prove each of the three following elements beyond a reasonable doubt. One, the defendant committed the crime of possessing with intent to distribute cocaine base as charged in Count 1 of the superseding indictment, and, two, he knowingly possessed a firearm and, three, his possession of the firearm was in furtherance of possessing with intent to distribute cocaine base as charged in the superseding indictment.**

**If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant guilty of that charge. If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant not guilty of that charge.**

**During means at any point within the offense conduct charged in Count 1 of the superseding indictment.**

**A person possesses a firearm in furtherance of a crime if the firearm furthers, advances, moves forward, promotes, or facilitates the crime. The mere presence of a firearm at the scene of a crime is insufficient to establish that the firearm**

**Charge**

1 was possessed in furtherance of the crime. There must be some  
2 connection between the firearm and the crime.

3 Firearm means any weapon which will or is designed to  
4 or may readily be converted to expel a projectile by the action  
5 of an explosive, the frame or receiver of any such weapon, any  
6 firearm muffler or firearm silencer, any destructive device.

7 In determining whether a gun was possessed in  
8 furtherance of a drug crime, you may consider the type of drug  
9 activity that was being conducted, accessibility of the firearm,  
10 the type of weapon, whether the defendant's possession of the  
11 firearm was legitimate or illegal, whether the gun was loaded,  
12 proximity to drugs or drug profits, and the time and  
13 circumstances under which the gun was found. No one factor is  
14 dispositive. It is up to you to determine the weight, if any,  
15 to accord any of these factors.

16 With respect to Count 3, it is not necessary for the  
17 government to prove that the drug trafficking crime alleged in  
18 that count was the sole or principal purpose for defendant's  
19 possession of the firearm. A person may have several different  
20 purposes for possessing a firearm. The government must prove  
21 beyond a reasonable doubt, however, that a significant purpose  
22 of the defendant's possession of the firearm was to further the  
23 drug trafficking crime.

24 A person distributes a controlled substance if he  
25 delivers or transferred possession of the controlled substance

1 to someone else.

2 Attorneys Karner, Pedersen, and Caver, have I omitted  
3 any instructions that I advised counsel in the instruction  
4 conference I would give in this case?

5 MR. KARNER: No, your Honor.

6 MR. CAVER: No, Judge.

7 THE COURT: Are there any objections to the  
8 instructions as given by the court other than those expressed  
9 during the instructions conference?

10 MR. KARNER: No, your Honor.

11 MR. CAVER: No, Judge.

12 THE COURT: Tim, would you take an oath, please?

13 (Court security officer duly sworn.)

14 THE COURT: All right. Folks, I'm going to release you  
15 to deliberate on your verdict. I want to talk to you about a  
16 few other matters. The exhibits will be gathered and will be  
17 presented to you. There are certain exhibits that were admitted  
18 into evidence that are not being sent back to you in the jury  
19 room but they are still evidence in the case. One of these is  
20 the Government's Exhibit 19, which is the optical disks. You  
21 have the written text messages in Government's Exhibit 21. I  
22 don't think there's any reason you'd need the optical disk, but  
23 if for some reason you think you do, send that request out to  
24 me, and we'll consider it.

25 Also, we're not going to send back Government's

1       **Exhibit 6A. That's the magazine with the bullets. When I send**  
2       **people back to the jury room to deliberate, I don't want them to**  
3       **have a firearm and bullets. But if for some reason you think**  
4       **you need the bullets, let me know, and I'll consider that**  
5       **request and let you know.**

6               **MR. KARNER: I'm sorry to interrupt, your Honor, but**  
7       **can we have a sidebar, please?**

8               **THE COURT: Sure.**

9               **(The following proceedings were had at the sidebar, out of**  
10       **the presence and hearing of the jury:)**

11              **MR. KARNER: I'm sorry to bring this up now. I**  
12       **understand the court's order about what items you're going to**  
13       **allow back, and I'd just ask you to respectfully reconsider.**  
14       **Because apparently there's a Department of Justice policy that**  
15       **we're supposed to object to guns or loaded firearms, and I**  
16       **understand you're going to send an unloaded firearm but also**  
17       **drugs back to the jury. I wasn't aware of that.**

18              **THE COURT: I'm not sending them back.**

19              **MR. KARNER: Oh, you're not --**

20              **THE COURT: Oh, no. I am That's right. I am**

21              **MR. KARNER: Respectfully, I'd ask you to reconsider,**  
22       **but it's your courtroom**

23              **MR. CAVER: Judge, can I just talk to my client real**  
24       **quick?**

25              **THE COURT: Sure.**

1           **(Brief pause.)**

2           **MR. CAVER:** Judge, at this time we would ask for the  
3 jury to see the evidence. We would like it to go back.

4           **THE COURT:** I'll send it back. I'll instruct them not  
5 to tamper with the envelope.

6           **MR. KARNER:** Okay. My conscience is clear.

7           **(The following proceedings were had in open court, in the**  
8 **presence and hearing of the jury:)**

9           **THE COURT:** Folks, for obvious reasons, I do not want  
10 you to open the Exhibit Number 7. That's the plastic envelope  
11 containing the crack cocaine. If there is some reason you feel  
12 that you need to open that envelope, let me know, and I'll  
13 consider your request.

14           You may take your notes with you and your copy of the  
15 jury instructions. You may write on your jury instructions,  
16 circle words, underline phrases. They're for your own use to  
17 use as you see fit. We will assemble the exhibits and send them  
18 to you. You will also receive a copy of the stipulations to  
19 which the parties have agreed. We will give you a copy of the  
20 superseding indictment.

21           Again, during your deliberations, you must not  
22 communicate with or provide any information to anyone by any  
23 means about this case. You may not use any electronic device or  
24 media, such as a telephone, cell phone, smart phone, iPhone,  
25 BlackBerry, or computer, the Internet, any Internet service, or

1 any text or instant messaging service, or any Internet chat  
2 room, blog, or website, such as Facebook, MySpace, LinkedIn  
3 YouTube, or Twitter, to communicate with anyone any information  
4 about this case or to conduct any research about this case until  
5 after I accept your verdict.

6 If you separate -- for example, one or more of you have  
7 to leave the room for any reason -- suspend deliberations until  
8 you all are together again. The bathrooms are outside the jury  
9 deliberation room. If one of you has to use the restroom, stop  
10 talking about the case. You only can deliberate on this case  
11 when you all are together in the room.

12 Mr. Ferguson, please escort the jury to the jury room  
13 to deliberate on their verdict and advise me when the jury is  
14 ready to report its verdict. Betty and Mary, you stay at your  
15 chairs, please.

16 (The following proceedings were had in open court, out of  
17 the presence and hearing of the jury:)

18 THE COURT: All right. Betty and Mary, I'm going to  
19 conditionally release you from further jury service in this  
20 case. That is, you may leave the courthouse and go about your  
21 business, but if a member of the primary jury becomes ill or  
22 incapacitated or is unable to perform or is disqualified from  
23 performing his or her duties as a juror, you may be called back  
24 to deliberate with the other jurors.

25 So, please leave a telephone number with the court

1 security officer at which he can reach you. He will call you  
2 either to tell you that you must come back to the courthouse to  
3 continue your jury service or to tell you that the case has been  
4 concluded and that your service as a juror is no longer  
5 required.

6 With that in mind, please remember that until you are  
7 called by the court security officer, you must not discuss the  
8 case with anyone else or allow anyone to discuss it in your  
9 presence. You must not read any newspaper articles or listen to  
10 any radio or television broadcasts relating to this case. Do  
11 not make any independent investigation of the case by reading  
12 materials, attempting any testing, or going to any location  
13 where any of the events in this case took place. If anyone  
14 contacts you or attempts to do so, either directly or  
15 indirectly, about this case, report that to me immediately.

16 I'm going to provide you each with a certificate of  
17 appreciation. I know it's just a piece of paper, but it does  
18 represent our sincere gratitude to you for the time and effort  
19 and sacrifice that you made in serving as jurors in this case.

20 But remember, you're not in the jury room but you're  
21 under the same kinds of prohibitions and directions that the  
22 jury is. Mr. Ferguson will call you, I promise, either to tell  
23 you that you have to come back to court to serve as a juror or  
24 that the case has ended, and once the case has ended, you're on  
25 your own. You can talk to anybody about this. But please

1       remember to leave your cell phone numbers with Mr. Ferguson.

2               Okay. Thank you, ladies. Nice to meet you. Just  
3       leave your notes on your chair, if you have notes, and your jury  
4       instructions.

5               (Brief pause.)

6               MR. CAVER: Your Honor, may I ask just briefly? How  
7       late do you think the jurors might stay this evening?

8               THE COURT: You know, I'm just going to give them time  
9       to get settled back there, and then I'm going to ask them  
10      whether they want to stay and order dinner or whether they want  
11      to come back tomorrow morning.

12              MR. CAVER: Thank you.

13              THE COURT: So, if you'll just stay in the courtroom  
14      I'm going to give them about 20 minutes, and then I'm going to  
15      put that question to them. And if they want to go home, they'll  
16      go home. I'll admonish them about the same things that we've  
17      been talking about, certain restrictions under which they have  
18      to operate.

19              MR. CAVER: Okay.

20              THE COURT: I want to make sure we assemble everything  
21      we give to the jury. Do you have a copy of the indictment for  
22      them, Mr. Pedersen?

23              MR. PEDERSEN: Mr. Karner is grabbing that.

24              THE COURT: All right. Here are the verdict forms,  
25      Tim. Here are the stipulations. Five stipulations? Is that

1 correct?

2 MR. CAVER: Yes, five. And, Judge, I believe it's  
3 Defendant's Exhibits 1 through 3.

4 THE COURT: All right. Do you have the defense  
5 exhibits?

6 (Brief pause.)

7 MR. CAVER: I think we had a stipulation regarding the  
8 authenticity of the SwedishAmerican Hospital records. We also  
9 had --

10 THE COURT: Right. I've got that here.

11 MR. CAVER: And then we also had the stipulation  
12 regarding the use of drugs that was reported to the jail nurse  
13 at the Winnebago County Jail on July 15th of 2011. That was  
14 nine days after the arrest. And then we had the third  
15 stipulation that I had moved to reopen the proofs with. And so,  
16 there should be three stipulations. Actually, all of the  
17 substantive evidence of the SwedishAmerican Hospital stipulation  
18 that was previously entered into is contained within the second  
19 stipulation.

20 THE COURT: Okay. Wait. As far as that stipulation  
21 regarding SwedishAmerican Hospital, I had put a note on it that  
22 says wait on this in case the parties may use it because they  
23 may not want to use it. So, that's why I kept it in.

24 MR. CAVER: And that's why it's not -- I see. Then we  
25 are only putting in two. The one is regarding the jail.

1           **THE COURT:** You mean -- when you say we, you mean you  
2           and Mr. Poke?

3           **MR. CAVER:** Yes. It's only the two stipulations. The  
4           first was regarding the Winnebago County Jail admission by  
5           Mr. Poke to use cocaine on July 15th, 2011, and then the second  
6           one is the one that we had to reopen the proofs to enter.

7           **THE COURT:** The first one was what, did you say?

8           **MR. CAVER:** The Winnebago County Jail.

9           **THE COURT:** Right. You have that, Tim

10          **MR. CAVER:** We had stipulated that Mr. Poke made the  
11          entry into the Winnebago County Jail medical record that he had  
12          previously used cocaine.

13          **THE COURT:** Cocaine last used on 7-6-11.

14          **MR. CAVER:** Correct.

15          **THE COURT:** Okay. I've got that.

16          **MR. CAVER:** And then the one that we reopened the  
17          proofs with, which was a SwedishAmerican Hospital medical  
18          record.

19          **THE COURT:** Does Tim have that one?

20          **MR. CAVER:** I handed it to the court previously.

21          **THE COURT:** Why don't you go look.

22          **MR. CAVER:** And then the one you are holding, Judge, we  
23          are not using, and I'll just make my record that that one that  
24          you are holding is -- all of the information contained in that  
25          stipulation is fully contained within the stipulation that we've

1 entered that's here.

2 THE COURT: Well, the one I'm holding will not go back  
3 to the jury.

4 MR. CAVER: Correct. And I'll take it back or you can  
5 keep it, whichever you prefer.

6 THE COURT: I'll keep it.

7 MR. CAVER: Okay. Thank you.

8 MR. KARNER: Judge, one matter we didn't discuss. We  
9 never explicitly dealt with the forfeiture allegation.

10 MR. PEDERSEN: Well, we do it after -- if there's a  
11 conviction, then if the defendant wishes -- if the defendant  
12 wishes to have the jury determine the forfeiture, then we could  
13 go forward at that time. So, he needs to make that decision.

14 THE COURT: You're seeking to forfeit the gun, the  
15 bullets --

16 MR. KARNER: Yes.

17 THE COURT: -- and the money?

18 MR. KARNER: I don't think the money is in there, just  
19 the gun.

20 THE COURT: Would you talk to Mr. Poke and see if he  
21 has any dispute as to whether the gun and bullets should be  
22 forfeited?

23 MR. CAVER: Judge, the gun and bullets were never  
24 Mr. Poke's, and so the forfeiture allegation, unless the real  
25 owner of the gun comes forward, we are not contesting that.

1           **THE COURT:** So, he has no objection to the forfeiture  
2 of the gun and bullets.

3           **MR. CAVER:** No. He never owned them

4           **MR. PEDERSEN:** Well, so, specifically, though, he's --  
5 if the jury finds him guilty of the offenses involving the  
6 firearm, he's not requesting a further finding by the jury as to  
7 forfeiture.

8           **THE COURT:** That's what he tells me.

9           **MR. CAVER:** That is correct.

10          **MR. PEDERSEN:** Okay.

11          **THE COURT:** One last question I have. Do either of the  
12 parties wish the jurors to be polled?

13          **MR. CAVER:** Yes, Judge.

14          **MR. KARNER:** Not us.

15          **MR. PEDERSEN:** Not on behalf of the government.

16          **THE COURT:** Just stay in the neighborhood.

17          **MR. CAVER:** I'm not going home.

18          **THE COURT:** All right.

19          (Whereupon, deliberations commenced at 4:45 o'clock p.m.)

20          (The following proceedings were had in open court, out of  
21 the presence and hearing of the jury, at 5:55 o'clock p.m.)

22          **THE COURT:** All right. We're on the record. It's been  
23 indicated to me by the court officer that the jury has reached a  
24 verdict. May I bring the jury in, please?

25          **MR. CAVER:** Yes.

1           (The following proceedings were had in open court, in the  
2           presence and hearing of the jury:)

3           THE COURT: All right. Folks, it's been indicated to  
4           me by the court security officer that the jury has reached a  
5           verdict. May I ask who your foreperson is?

6           THE FOREPERSON: I am

7           THE COURT: It's Brenda.

8           THE FOREPERSON: Yes.

9           THE COURT: Brenda, all the jurors have unanimously  
10          reached a verdict on each of the counts; is that correct?

11          THE FOREPERSON: Yes.

12          THE COURT: Would you hand the verdicts to the court  
13          security officer, and I'll read them?

14          (Said documents were tendered to the court.)

15          THE COURT: The verdicts are as follows. We, the jury,  
16          find the defendant, Dayton Poke, guilty of possession with  
17          intent to distribute cocaine base as charged in Count 1 of the  
18          superseding indictment, signed by the foreperson and all the  
19          members of the jury.

20          The next verdict form reads: We, the jury, find the  
21          defendant, Dayton Poke, guilty of possessing a firearm as a  
22          felon as charged in Count 2 of the superseding indictment,  
23          signed by the foreperson and all of the jurors.

24          And the last verdict form reads: We, the jury, find  
25          the defendant, Dayton Poke, guilty of possession of a firearm in

1 furtherance of a drug trafficking crime as charged in Count 3 of  
2 the superseding indictment.

3 Ms. Montgomery, were those and are those now your  
4 verdicts?

5 A JUROR: Yes.

6 THE COURT: Ms. Robbel, were those and are those now  
7 your verdicts?

8 A JUROR: Yes.

9 THE COURT: Ms. Sus, were those and are those now your  
10 verdicts?

11 A JUROR: Yes.

12 THE COURT: Ms. Cortinez, were those and are those now  
13 your verdicts?

14 A JUROR: Yes.

15 THE COURT: Ms. Burke, were those and are those now  
16 your verdicts?

17 A JUROR: Yes.

18 THE COURT: Ms. Gray, were those and are those now your  
19 verdicts?

20 A JUROR: Yes.

21 THE COURT: Mr. Fujimoto, were those and are those now  
22 your verdicts?

23 A JUROR: Yes.

24 THE COURT: Ms. Jones, were those and are those now  
25 your verdicts?

1                   A JUROR:   Yes.

2                   THE COURT:   Ms. Zimmerman, were those and are those now  
3 your verdicts?

4                   A JUROR:   Yes.

5                   THE COURT:   Ms. Hoffman, were those and are those now  
6 your verdicts?

7                   A JUROR:   Yes.

8                   THE COURT:   Ms. Sextonson, were those and are those now  
9 your verdicts?

10                  A JUROR:   Yes.

11                  THE COURT:   Mr. Landis, were those and are those now  
12 your verdicts?

13                  A JUROR:   Yes.

14                  THE COURT:   Okay.   Thank you very much, folks.   That  
15 concludes your service as jurors in this case.   Have a good  
16 night.

17                  (The following proceedings were had in open court, out of  
18 the presence and hearing of the jury:)

19                  THE COURT:   All right.   I will enter a judgment of  
20 guilty on the jury's verdict.   Post-trial motions will be filed  
21 within 14 days.   I will order a presentence investigation and  
22 set the matter for sentencing.

23                  Dayton, in connection with the presentence  
24 investigation, you will be interviewed by a probation officer.  
25 During your interview, you must be truthful in any answer you

1       may give. If you are not truthful, you could commit obstruction  
2       of justice under the sentencing guidelines and have additional  
3       points added to the offense level to be established in your  
4       case. Your lawyer should be present during any interview.

5               I'll order the defense to file any objections to the  
6       report before the sentencing hearing. I urge the parties to  
7       read the time deadlines set out in the sentencing hearing order  
8       and strictly comply with them

9               I'll set this case for sentencing on August 29th at  
10       2:30. Is that date convenient for the parties?

11              MR. KARNER: Yes, sir.

12              MR. CAVER: If I may have a moment?

13              (Brief pause.)

14              MR. CAVER: That would be fine, Judge.

15              THE COURT: All right. So ordered.

16              Defendant's remanded. Court's in recess.

17              MR. KARNER: Judge, should we wait around for the  
18       exhibits to be returned, or does the court want to keep them?

19              THE COURT: I'll get the exhibits, and I'll have them  
20       brought back to you.

21              MR. KARNER: Okay. Thank you.

22              (Which were all the proceedings had in the above-entitled  
23       trial on the days and dates aforesaid.)

24

25

1           **I certify that the foregoing is a correct transcript from**  
2           **the record of proceedings in the above-entitled matter.**

3  
4  
5           \_\_\_\_\_  
6           **Mary T. Lindbloom**  
7           **Official Court Reporter**  
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